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NO. 64838-1-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

(King County Superior Court Cause No. 09-1-05321-5 SEA)

CITY OF AUBURN
Petitioner,

V.

DUSTIN GAUNTT,
Respondent,

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER.

COMES NOW the Petitioner, City of Auburn, by and through its attorney, Daniel B. Heid, and pursuant to Rule 13.4 of the Rules of Appellate Procedure (RAP), respectfully petitions the Supreme Court for review of the decision designated in part II of this petition.

II. DECISION.

The decision for which review is sought is the decision of the Court of Appeals entitled City of Auburn v. Dustin B. Gauntt, Court of Appeals Cause Number 64838-1-I, decided March 14, 2011, [*City of Auburn v. Gauntt*, --- Wn. App. ---, --- P.3d ----, 2011 WL 907016 (2011)] a copy of which is appended hereto, marked as Appendix A.

The above decision is the result of a RALJ[1] Appeal to the King County Superior Court [filed by the Respondent, Dustin Gauntt, hereinafter referred to as the Defendant] and a Motion for Discretionary Review to the Washington State Court of Appeals, Division One [filed by the Petitioner, City of Auburn, hereinafter referred to as the Plaintiff]. These pleadings followed the Judgment and Sentence of the Defendant in the Auburn Municipal Court wherein he was charged with and convicted of the offenses of Possession of Marijuana under

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1 Rules for Appeal of Decisions of Courts of Limited Jurisdiction.

Forty Grams, filed under Section 69.50.4014 of the Revised Code of Washington (RCW) and Unlawful Use of Drug Paraphernalia, filed under RCW 69.50.412.

The Superior Court reversed the Municipal Court and the Court of Appeals affirmed the Superior Court decision. The Court of Appeals opinion and the pleadings and decisions of the various lower courts are appended hereto as Appendices A through L-7.

III. ISSUE PRESENTED FOR REVIEW.

The issue before this Court is whether a city may enforce a state law, pursuant to RCW 39.34.180, without having adopted the state law by reference or having adopted a compatible ordinance if the crimes were committed by adults within the corporate limits of the City and referred for prosecution by the City's Police Department.

IV. STATEMENT OF THE CASE.

On December 5, 2008, at approximately 4:22 p.m., officers of the Auburns Police Department observed the Defendant traveling within the City of Auburn, using what they recognized as a marijuana pipe to inhale smoke that they suspected to be marijuana smoke. CP 16-17. The police officers stopped the Defendant's vehicle, verified their suspicions and ultimately arrested him. The officers issued him Citation No. CR099329 for the charged offenses. CP 16-17.

The Defendant was charged in the Auburn Municipal Court, under its Cause Number C99329, with the crimes of Possession of 40 Grams or Less of Marijuana and Unlawful Use of Drug Paraphernalia. CP 88-89. The Defendant was charged under state law, not city ordinance, with the misdemeanor crimes of Possession of 40 Grams or Less of Marijuana filed under RCW 69.50.4014 [Count 1] and Unlawful Use of Drug Paraphernalia filed under RCW 69.50.412 [Count 2]. CP 88-89.

While the charges were pending before the Municipal Court, the Defendant raised several motions. CP 17; 48-53. Among those motions was a motion to dismiss challenging the jurisdiction of the Auburn Municipal Court to hear the criminal charges as they were filed under state law, rather than under city ordinance. CP 48-53. The Municipal Court ruled that the City of Auburn was legally authorized to charge the Defendant under state law. The Defendant chose not to take the matter to trial, and instead submitted the charges to the Municipal Court pursuant to a Statement of Defendant on Submittal or Stipulation to Facts, submitted on June 8, 2009. The Defendant was found guilty of both charges, and sentenced on the same date – June 8, 2009. CP 10. The Defendant thereafter appealed the matter to the King County Superior Court under Cause Number 09-1-05321-5 SEA. CP 1-2.

The Superior Court differed from the Municipal Court in its interpretation of Section 39.34.180 RCW, concluding that the Plaintiff was not entitled to enforce state law without having first adopted the state law by reference or having adopted a compatible ordinance. The Superior Court also set aside the findings of guilty and remanded the case to the Auburn Municipal Court for dismissal. CP 160-61. The Plaintiff filed a Motion for Discretionary Review in the Court of Appeals, Division One, and the Court affirmed the Superior Court's ruling by its Opinion, Appendix A. The Plaintiff now petitions the Supreme Court for Review.

V. ARGUMENT.

This is a case of first impression. Other than Division One in this case, no appellate court has addressed the issue of the authority and responsibility for filing in municipal court criminal violations of state laws that have not been adopted by ordinance. Review of the Court of Appeals' decision is warranted pursuant to Rule 13.4(3) and 13.4(4) of the Rules of Appellate Procedure (RAP) because this case involves a significant question of law under the Constitution of the State of Washington or of the United States and it involves an issue of substantial public interest that should be determined by the Supreme Court.

Practically every city in this state could find itself in the position in which

Auburn finds itself. All cities can have misdemeanor crimes committed within its corporate boundaries and referred from its police where such crimes have not been adopted by city ordinance. This failure to adopt the crimes could be inadvertent, intentional, or simply the result of the time it takes to enact legislation and for ordinances to take effect. Whatever the reason, under Division One's ruling a city is precluded from enforcing the law in its courts. For instance, if the legislature enacts a new law adopting a new crime, there will inevitably be a point in time when the new crime has not yet been adopted by the city, even though it may intend to do so, and the crime would, thus, be unenforceable by the city.

A. RCW 39.34.180 clearly expresses the Legislature's intent that misdemeanor crime committed in a City should be prosecuted by that City.

The Court of Appeals opinion directly conflicts with the language of RCW 39.34.180. That section reads in part,

> 39.34.180 Criminal justice responsibilities--Interlocal agreements.
>
> (1) *Each county, city, and town is responsible for the prosecution*, adjudication, sentencing, and incarceration *of misdemeanor and gross misdemeanor offenses committed* by adults *in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance*, and must carry out these responsibilities through the *use of their own courts, staff, and facilities*, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory

> responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.
>
> . . . .

(Emphasis added.)

RCW 39.34.180 carries a very strong mandate. Every city and town, including Auburn, is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies; regardless of *whether filed under state law or city ordinance*. Cities and towns may meet this mandate by either prosecuting these offenses themselves or by contracting for prosecution services with the county – or perhaps another public agency.[2]

Interpretation of statutes is a question of law and thus must be reviewed de novo. *City of Montesano v. Wells*, 79 Wn. App. 529, 902 P.2d 1266 (1995). In interpreting a statute, the court's primary goal is to give effect to legislative intent. Thus, the court construes the statute in a manner that best advances the perceived legislative purpose. *Id.* In these regards,

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2 *See City of Medina v. Primm*, 160 Wn.2d 268, 157 P.3d 379 (2007).

courts may turn to legislative history to discern the legislature's intent if the plain meaning analysis fails to resolve the question before the court. *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

In this case, the legislative history supports the Plaintiff's position. RCW 39.34.180 was passed in response to the experience of several cities in this state that repealed or significantly pared down their criminal codes, ostensibly foisting the responsibility for prosecution on counties. The FINAL BILL REPORT - SSB 5472 Ch 68 Laws of 2001 (relating to terminating municipal courts) gave a brief description of the history of RCW 39.34.180, as follows:

> **Background:** In the early 1980s there was concern that some municipalities were terminating their court system, or repealing those portions of their criminal codes that were expensive to enforce while retaining portions of the civil code that generated moneys for the city, and in effect transferring the cost of prosecution, adjudication, and sentencing of criminal cases to the counties.

Additionally, the original SENATE BILL REPORT for SB 6211, as reported by the Senate Committee on Government Operations, January 31, 1996, (ultimately passed as ESSB 6211 – Ch 308 Laws of 1996 [the bill that first promulgated RCW 39.34.180], described the bill as requiring each county, city or town to be responsible for prosecution of misdemeanor and

gross misdemeanor offenses occurring in their respective jurisdictions. The only *exception* to the city prosecuting non-felony offenses would be contracting for prosecution services by the county. *See also* SENATE BILL REPORT ESSB 6211 as Passed by the Senate, February 12, 1996. These bill reports describe the contracts (interlocal or otherwise) as the exception to the bill's requirement that cities be directly responsible for prosecution of misdemeanors and gross misdemeanor offenses occurring in their respective jurisdictions – regardless of whether the charges are filed under city ordinance or state law.

Furthermore, HOUSE BILL REPORT ESSB 6211, as passed by the House, amended February 29, 1996, gave the following summary of ESSB 6211:

> **Summary of Bill:** It is clarified that each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanors committed by adults within their respective jurisdictions who are referred from their respective law enforcement agencies. *This responsibility applies if the action is filed under state law or city ordinance.* Each county, city, or town must carry out this responsibility through the use of its own courts, staff, and facilities, or enter into contracts or interlocal agreements to provide these services.

(Emphasis added.)

This legislative history shows that in order to address the issues

noted in the bill reports, and to prevent the occurrence of cities shifting the responsibility and cost of misdemeanor prosecution to counties from continuing, the Legislature mandated that cities either prosecute those violations – using their own courts and resources – or contract with the county for prosecution services.

This mandate was consistent with the provisions of RCW 3.50.800 and 3.50.805, which preclude cities from repealing their criminal codes in their entirety. But *even if* a city *did not entirely repeal* its criminal code, RCW 39.34.180 still imposed on the city the responsibility to either prosecute non-felony criminal violations referred by its police or pay the county to do so, regardless of whether the violations are charged under state law or city ordinance.

The Court of Appeals misinterpreted the purpose for which the statute was adopted. It was not, as the Court of Appeals stated to merely "apportion responsibility between different jurisdictions when they have the authority to prosecute the same crimes and to allow government entities to enter into interlocal agreements to allocate financial responsibility for the prosecution of these crimes." City of Auburn v. Gauntt, No. 64838-1-I at 6 (Wash. March 14, 2011). The purpose must be derived from Ch. 308, Laws of 1996 (codified as

RCW 39.34.180), not the general provisions of the Interlocal Cooperation Act. The clear legislative purpose of Ch. 308, Laws of 1996 was to impose upon cities the responsibility and obligation to prosecute all non-felony crimes themselves or enter into a contract to pay the county to do so.

If, according to the Court of Appeals opinion, a city or town cannot prosecute a non-felony criminal violation committed by an adult offender within its jurisdiction and referred by its police unless it has adopted the crime or has contracted with the county or other public entity, the crime could not be prosecuted. Thus, a city could circumvent the legislature's purpose in adopting the 1996 law by simply not adopting crimes and not contracting with the county. This possibility could not have been intended by the legislature.

Moreover, even if a city wanted to contract with a county [or other jurisdiction] there is no right or entitlement to force such a contract. There is nothing in RCW 39.34.180 that mandates that a county necessarily agree to provide prosecution services for a city. *See* Attorney General Opinions - AGO 2000 NO. 2 and AGO 2006 NO. 11. These opinions conclude that RCW 39.34.180 does not obligate a county [or any other entity] to enter into a contract with a city or town to prosecute cases referred from the city's or town's law enforcement officers. So, under Division One's reading of the statute,

misdemeanor defendants would be immune from prosecution of state law non-felony crimes even though a city did not intend to circumvent its statutory responsibility if its host county refused to enter into a contract for prosecution.

The Court of Appeal's opinion observes that cities have authority to adopt state statutes by reference, but this does not address the court's misinterpretation of RCW 39.34.180. If a city were to prosecute a state statute under that ordinance, it would be prosecuting under its ordinance, not under state law. Using the Court of Appeals' own analysis, the ordinance, not the statute would be the basis of the authority to prosecute. Additionally, anytime a city prosecutes under its own ordinances, even when prosecuting offenses adopted by reference from state statutes, it prosecutes the offense using its own court staff and facilities. That illustrates the significance of the language of RCW 39.34.180 which states that:

> Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether *filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities* . . . .

RCW 39.34.180 (emphasis added).

The language that says a city "must carry out these responsibilities

through the use of their own courts, staff, and facilities" makes no sense – and is absolutely unnecessary – if the statute is referring to offenses adopted by ordinance.

B. RCW 39.34.180 "confers jurisdiction" for cities to prosecute misdemeanors committed in their jurisdiction under state law regardless of whether the City has specifically adopted that state law.

The Court of Appeals makes a distinction that is not elsewhere found in the law between the obligation to file and the authority to file violations in court. The court's opinion finds that the word "filing" in RCW 39.34.180 refers to the procedural act of charging a crime, not the authority to do so. Such a distinction creates an absurd result in reconciling RCW 3.50.020 and RCW 39.34.180.

If a city must file a violation of the law, whether under city ordinance or under state law, the Court of Appeals opinion raises the question of how the city can meet that mandate if it must also have adopted the statute by reference, as there is, according to the Court of Appeals opinion, no other authority to file criminal charges under state law. Again, it would not have been necessary for the legislature to specify that prosecution must occur through use of a city's own courts, staff and facilities if the prosecution was of a crime adopted, in any fashion, by ordinance. On the other hand, if the statute is read as mandating city prosecution of state statutes (without regard to whether they were adopted by

reference), the statute's requirement that a city use its own court, staff and facilities makes sense. Moreover, since the very purpose of the statute was to place prosecution responsibilities on cities, that purpose could only be achieved if cities are able to file charges under state law and use their own facilities where they do not have a contract with the county for prosecution services.

Contrary to the Court of Appeals' decision, Chapter 3.50 RCW does not preclude reading RCW 39.34.180 as authorizing a city to prosecute state laws although the city has not adopted the laws by reference. RCW 3.50.020 provides as follows:

> 3.50.020 Jurisdiction.
>
> The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and *exclusive original criminal jurisdiction of all violations of city ordinances* duly adopted by the city in which the municipal court is located and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. *The municipal court shall also have the jurisdiction as conferred by statute.* The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith.

(Emphasis added.)

RCW 3.50.020 specifically states that "[t]he municipal court shall also have the jurisdiction as conferred by statute." That contemplates and

acknowledges that additional authority may be granted. RCW 39.34.180 provides the jurisdiction conferred by statute. It specifies that in meeting their responsibility to prosecute non-felony crimes, cities shall file "under state law or city ordinance" and shall use "their own courts, staffs and facilities."

Specifying the use of their own courts, staffs and facilities makes no sense if the statute is only talking about state statutes adopted by reference. A city would have no choice but to use its own court, staff and facilities if it were to prosecute any violation of ordinance. Violations of city ordinances include both those crimes adopted as uniquely the city's and state statutes adopted by reference. Both belong to the city by virtue of the adopting ordinance.

Also, there is nothing in RCW 39.34.180 that forces a county to necessarily agree to provide prosecution services for a city. *See*, again, Attorney General Opinions - AGO 2000 NO. 2 and AGO 2006 NO. 11. These opinions conclude that RCW 39.34.180 does not obligate a county to enter into a contract with a city or town to handle, through the county's court system, misdemeanor cases referred from the city's or town's law enforcement officers.

If, as the Court of Appeals has ruled, a city cannot prosecute violations under state law in its own court, then if the city had not adopted the

criminal statute by ordinances, *and* if the county was unwilling to prosecute the violation on the city's behalf, such violations would be completely immune from prosecution. Even if the city could be compelled to adopt the state law provisions if the city hasn't already adopted the statute by reference[3], subsequent adoption would not apply ex post facto to the prior violations.

Courts should avoid reading statutes in ways that will lead to absurd or strained results. *Wright v. Jeckle*, 158 Wn.2d 375, 379-80, 144 P.3d 301 (2006). Yet, that type of result is reached if RCW 39.34.180 is read to give cities the responsibility for prosecuting criminal offenses, but at the same time requiring that they must have adopted the relevant state criminal statutes by ordinance, and yet counties cannot be required to enter into contracts with cities.

C. Defendant's constitutional arguments below are inapposite.

Although the Court of Appeals did not reach Defendant's argument that, under the language of Article XI § 11 of the Washington State Constitution, cities cannot prosecute violations of laws that the city has not adopted or enacted, Plaintiff submits that Defendant's argument is misplaced and should be rejected

3 It should be clear that the current statute does not mandate adoption, as city prosecution is only one of the two options of RCW 39.34.180.

by the Supreme Court. Article XI § 11 of the State Constitution states as follows:

> Article XI § 11. Police and Sanitary Regulations
> Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

The Defendant erroneously limits his argument to the language of that singular section of the state constitution, and more specifically, to the language that says a "city... may make and enforce ... such local police, sanitary and other regulations ...." (Art. XI § 11, Wash. Const., emphasis added.)

The Defendant argued below that the "make and enforce" language can only be construed as requiring the city to adopt ordinances it wishes to enforce. However, if the Court were to adopt the Defendant's argument, it would, in essence, deem the language of Art. XI § 11, Wash. Const. as the only source of municipal authority, and, further, construing it to mean "a city may only enforce ... such local police, sanitary and other regulations it makes (adopts)." In order to reach the conclusion the Defendant seeks, the Court would have to ignore other provisions of the State Constitution, as well as ignore statutory provisions, including 39.34.180 RCW.

"[I]f a constitutional provision is plain and unambiguous on its face, then no construction or interpretation is necessary or permissible." *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 650, 211 P.3d 406

(2009). Defendant's interpretation of Art. XI § 11 Wash. Const. creates a conflict among other constitutional provisions as well as a clear incongruity with statutory language. The fact of the matter is that while Art. XI § 11 Wash. Const. does authorize cities to make and enforce regulations, *it does not say that the legislature cannot empower cities to take action through a different route.*

Article XI § 11 does not exclude avenues created by other constitutional provisions or by enactments of the legislature. The Defendant's argument ignores the well established concept that cities are creatures of the legislature (*Othello v. Harder*, 46 Wn.2d 747, 284 P.2d 1099 (1955)) and thus the legislature can enact statutes that give authority in excess of the limited language of Article XI § 11.

So long as the authority granted by the state legislature is consistent with the general law, the Constitution does not limit the legislature from taking action which expands the authority of cities beyond what was contemplated or included in the language of the Constitution. Article XI § 10, of the state constitution says that the legislature shall provide for the incorporation and organization of cities and that all city charters shall be subject to and controlled by general laws. *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 676, 409 P.2d 458 (1965). Article XI § 10 of the state constitution states, in pertinent part, as follows:

> Article XI § 10. Incorporation of Municipalities
> Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws,

> shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to and controlled by general laws. .... (Emphasis added.)

Clearly this Article includes and contemplates that statutes affecting cities can change. Essentially, what the Defendant's argument indicates is that the legislature cannot add to or subtract from what the defendant argues is the authority set forth in Article XI section 11 of the state constitution.

The courts do not interpret statutes – legislative enactments – to render portions of their language meaningless. *See, e.g., State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (in turn citing *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)). Defendant's argument would render the Legislature's actions in adopting Ch. 308, Laws of 1996 meaningless. The better interpretation is that the Legislature, in adopting Ch. 308, Laws of 1996, built upon its knowledge of the relevant parts of the Constitution, as well as upon existing laws related to court and city jurisdiction in Chapters 3.50 and 35.20 RCW. Building upon existing law, the Legislature reaffirmed the principle that

misdemeanor crimes committed by adults within a city were to be enforced by that city's law enforcement personnel, regardless of whether the city had adopted that specific law. It also reaffirmed that the city in which the crime was committed was responsible for the prosecution of that crime, either in the city's court or by contract with another court.

F. CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeals' ruling that "the City may not enforce state law without having first adopted the state law by reference or having adopted a compatible ordinance." The decision of the Court of Appeals in this case is contrary to the plain language of the statute and ignores the rules of statutory construction. The Court of Appeals' approach in implementing RCW 39.34.180, if allowed to stand, would impair the ability of the criminal justice system to operate efficiently and consistently.

Respectfully submitted this 13 day of April, 2011.

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IN THE COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

CITY OF AUBURN,	)	NO. 64838-1-I
	)	
Petitioner,	)	CERTIFICATE OF SERVICE OF
	)	PETITION FOR REVIEW
v.	)	
	)	
DUSTIN GAUNTT,	)	
	)	
Respondent.	)	King County Superior Court
	)	Cause No. 09-1-05321-5 SEA

I, DOUGLAS RUTH, hereby certify and declare under penalty of perjury under the laws of the State of Washington, that on the date below set forth, I delivered a true and correct copy of the Petition for Review, concerning the above entitled matter to:

David Kirshenbaum
Attorney for Respondent
1314 Central Ave S; Ste 101
Kent, WA 98032

by: ☒ delivering a copy to the above address, on the 13 day of April, 2011.

☐ mailing a copy, in the United States Mail, postage prepaid, to the above address, on the _____ day of April, 2011.

SIGNED at Auburn, Washington, this 13 day of April, 2011.

DOUGLAS P RUTH
Signature

Appendix A
Court of Appeals decision in *City of Auburn v. Dustin B. Gauntt*,
Cause Number 64838-1-I, decided March 14, 2011
[*City of Auburn v. Gauntt*, --- Wn. App. ---, --- P.3d ----, 2011 WL 907016 (2011)].

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF AUBURN, Appellant, v. DUSTIN B. GAUNTT, Respondent.	)	No. 64838-1-I DIVISION ONE PUBLISHED OPINION FILED: March 14, 2011

GROSSE, J. — When, as here, a crime adopted under state law has not been expressly adopted by city code, or incorporated in the city code by reference to state statute, and no other state statute confers authority to prosecute that misdemeanor in municipal court, the city lacks authority to prosecute it in the municipal court. Accordingly, we affirm the decision on RALJ appeal reversing the trial court and remanding for dismissal of the charges.

FACTS

The City of Auburn (the City) charged Dustin Gauntt with one count of possession of less than 40 grams of marijuana and one count of unlawful use of drug paraphernalia. According to the police report, Auburn police officers saw Gauntt driving within the Auburn city limits using a pipe to smoke what appeared to be marijuana. They stopped his vehicle, confirmed their suspicions and issued him a citation for possession of marijuana and use of drug paraphernalia.

Before trial, Gauntt moved to dismiss both charges on the basis that the City did not have authority to prosecute these crimes because the City had not adopted the state statute under which they were charged or adopted a comparable ordinance. The

complaint on the charge of unlawful use of drug paraphernalia states that Gauntt committed the crime:

> Contrary RCW 69.50.412(1) or (2) charged pursuant to the authority vested by RCW 39.34.180 and the Auburn City Code 9.22.020 A. and against the peace and dignity of the City of Auburn;
>
> **Maximum Penalty:** 90 days in jail and/or a $1000 fine.
> **Mandatory Minimum Penalty:** First Offense – 90/89 and $250.00 fine and $50.00 to the Drug Fund
> Second Offense - 90/89 and $500.00 fine and $50.00 to the Drug Fund

The complaint on the marijuana possession charge states that Gauntt committed the crime:

> Contrary to RCW 69.50.4014 and the Auburn City Code and against the peace and dignity of the State of Washington.
>
> **Maximum Penalty:** 90 days in jail and/or a $1000 fine.
> **Mandatory Minimum Penalty:** First Offense – 1 day in jail and $250.00 fine and $50.00 to the Drug Fund
> Second or Subsequent Offense - 1 day in jail and $500.00 fine and $50.00 to the Drug Fund

Gauntt contended that while the City had adopted ordinances prohibiting marijuana possession and use of drug paraphernalia,[1] it had not adopted the mandatory minimum penalties for these crimes provided by the state statute under which he was charged.[2] The City agreed that its code did not provide for the mandatory minimum penalties, but contended that it still had authority to prosecute the crimes and seek these penalties under the state statute and intended to proceed under state law. The trial court denied the motion to dismiss and Gauntt proceeded to a bench trial, stipulating to the facts contained in the police report. The trial court entered a finding of guilty of both charges.

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[1] See Auburn City Code (ACC) 9.22.010 and ACC 9.22.020.
[2] See RCW 69.50.425 (providing for minimum penalties for violations of chapter 69.50 RCW).

Gauntt filed a RALJ appeal in superior court, again contending that the City had no authority to prosecute the crimes under state law because the state statute had not been adopted by the City. The superior court agreed, reversing the trial court and remanding for dismissal of the charges with prejudice. The court's decision on the RALJ appeal ordered:

> The City may not enforce state law without having first adopted the state law by reference or having adopted a compatible ordinance. Since the defendant was prosecuted for a crime not adopted by the City, the findings of guilty [are] hereby set aside and this case is remanded to the Auburn Municipal Court for dismissal.

The City moved for discretionary review, which was granted by this court.

ANALYSIS

The City contends that the RALJ decision was in error because the City has the authority to prosecute all misdemeanors committed within city limits, not just those expressly adopted by ordinance or incorporated by reference to the state statute. The City asserts that RCW 39.34.180 gives the City the authority to prosecute any misdemeanor committed within its jurisdiction, whether charged under state or city law. We disagree.

Municipal courts are creatures of the legislature.[3] As a court of limited jurisdiction, a municipal court may exercise only the jurisdiction affirmatively granted by the legislature, which has the sole authority to define the jurisdiction of such courts.[4] RCW 3.50.020 defines the jurisdiction of municipal courts and provides:

> The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city and shall have original jurisdiction of all other actions brought to enforce or recover license

[3] City of Seattle v. Briggs, 109 Wn. App. 484, 488-89, 38 P.3d 349 (2001).
[4] City of Medina v. Primm, 160 Wn.2d 268, 273, 157 P.3d 379 (2007).

> penalties or forfeitures declared or given by such ordinances or by state statutes. A hosting jurisdiction shall have exclusive original criminal and other jurisdiction as described in this section for all matters filed by a contracting city. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

Thus, the municipal court has jurisdiction over criminal actions arising under the city code and "as conferred by state statute."

The Auburn City Code permits the City to prosecute crimes committed within city limits that violate its code.[5] The City code also allows the City to prosecute crimes under state law when the City specifically adopts by reference the state statute:

> Statutes of the state of Washington specified herein and as specified in ordinances codified in this title are adopted by reference as and for a portion of the penal code of the city of Auburn, as if set forth in full, including the criminal/offense classification and penalty provisions applicable thereto unless a different classification and/or penalty is specifically provided for the particular sections of state statutes adopted by reference; provided, that the adoption of state statutes by reference shall not be construed or interpreted to vest in the city any authority or responsibility to prosecute felony offenses, and the adoption of state statutes which include felony provisions shall be limited to those provisions falling within the city's authority, and such adoption, and the provisions being adopted, shall be construed and interpreted in accordance with the lawful authority of the city. (Ord. 5682 § 1, 2002.)[6]

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[5] ACC 9.02.020 ("Any person who commits within the corporate limits of the city any crime that is a violation hereof, in whole or in part, or a violation the prosecution of which is the responsibility of the city pursuant to RCW 39.34.180, is liable to arrest and punishment."); ACC 9.02.030 ("An offense defined by this code, for which a sentence of imprisonment is authorized, constitutes a 'violation of city ordinance' and a 'crime.'").

[6] ACC 9.02.110. The City code also provides for "[c]itation reference to section adopted by reference" as follows:

In any citation, complaint, notice of violation or other pleading filed in a court of

The statutes incorporated by reference are listed in sections 9.02.900 and 9.22.900 of the City code.[7]

The City concedes that the crimes charged here are not violations of City ordinance and have not been adopted by reference to the state statute, but contends that it has authority to prosecute them as "conferred by state statute." The City relies on RCW 39.34.180, which is part of the Interlocal Cooperation Act[8] and addresses "[c]riminal justice responsibilities"[9] between the various local jurisdictions. The statute provides in part:

> (1) Each county, city and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.
>
> . . . .
>
> (5) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1,

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> competent jurisdiction or in any other forum, reference to the section or sections of state statutes adopted by reference as a part of the city code shall be by the same number identifying the section in the Revised Code of Washington. Such reference shall refer to and mean the appropriate section of the Auburn City Code adopted by reference from the Revised Code of Washington. (Ord. 5682 § 1, 2002.)

ACC 9.02.120 (emphasis omitted).

[7] ACC 9.02.900 lists statutes incorporated by reference relating general principles of criminal liability; ACC 9.22.900 lists statutes incorporated by reference relating to controlled substances.

[8] Chapter 39.34 RCW.

[9] (Emphasis omitted.)

1998.[10]

The City contends that the language, "whether filed under state law or city ordinance," gives the City the authority to prosecute any misdemeanor committed within its jurisdiction, not just those expressly adopted by ordinance or incorporated by reference to the state statute. We disagree.

When the meaning of statutory language is plain on its face, courts must give effect to that plain meaning as an expression of legislative intent.[11] Looking at the plain meaning of this statutory language, it simply refers to charges "*filed* under state law or city ordinance,"[12] not *adopted* under state law or city ordinance. By doing so, this assumes that a city already has the authority to file charges for the offense; nowhere does the statute grant a city the authority to prosecute all misdemeanors regardless of whether or not these offenses have been adopted by city code, as the City contends.[13] This makes sense, given the statute's purpose, which is to apportion responsibility between different jurisdictions *when* they have the authority to prosecute the same crimes and to allow government entities to enter into interlocal agreements to allocate financial responsibility for the prosecution of these crimes. As the court in Primm recognized, the purpose of the Interlocal Cooperation Act is the efficient allocation of existing powers of local governments:

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[10] The City code also provides: "Any person who commits within the corporate limits of the city any crime that is a violation hereof, in whole or in part, or a violation the prosecution of which is the responsibility of the city pursuant to RCW 39.34.180 is liable to arrest and punishment." ACC 9.02.020.

[11] Rental Housing Ass'n of Puget Sound v. City of Des Moines, 165 Wn.2d 525, 536, 199 P.3d 393 (2009).

[12] (Emphasis added.)

[13] In fact, the City code requires that any citation or complaint for a violation of a state statute adopted by reference as part of the City code must refer to the RCW section, which would amount to "filing under state law." See ACC 9.02.120.

> The purpose of the Interlocal Cooperation Act is "to permit local governmental units to make the most efficient *use of their powers* by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors."[14]

Additionally, the Interlocal Cooperation Act contemplates contracts among local entities for only those services they are already authorized to perform, as provided in RCW 39.34.080:

> Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking *which each public agency entering into the contract is authorized by law to perform*: **PROVIDED,** That such contract shall be authorized by the governing body of each party to the contract.[15]

Thus, RCW 39.34.180 does not confer any authority upon cities with respect to the adoption of crimes; it simply defines the responsibility of a city when it has authority to charge crimes that are also violations of state law.

Additionally, as Gauntt points out, had the legislature intended to grant such authority to municipal courts created under chapter 3.50 RCW, which applies to cities such as Auburn with a population less than 400,000,[16] it would have expressly done so. In fact, it has done so for municipal courts created under chapter 35.20 RCW, which applies to cities with populations over 400,000.[17] Under RCW 35.20.250, such municipal courts "shall have concurrent jurisdiction with the superior court and district court in all civil and criminal matters," and this has been held to include all misdemeanor violations of state law, regardless of whether a city has an ordinance expressly granting

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[14] 160 Wn.2d 268, 276, 157 P.3d 379 (2007) (quoting RCW 39.34.010) (emphasis in original omitted) (emphasis added).
[15] (Emphasis added.)
[16] RCW 3.50.010.
[17] RCW 35.20.010(1).

municipal court jurisdiction over state crimes.[18] But there is no comparable provision under chapter 3.50 RCW, the statute under which Auburn's Municipal Court was created.[19] Thus, this omission presumes a legislative intent that such a provision does not apply to municipal courts created under chapter 3.50 RCW, including that of Auburn.[20]

We affirm the superior court's order on RALJ appeal reversing the Auburn Municipal Court and remanding for dismissal of the charges.

WE CONCUR:

Cox, J.

Becker, J.

[18] See Briggs, 109 Wn. App. at 490.
[19] See ACC 2.14.020(A) ("[t]he municipal court . . . shall exercise all powers enumerated in this chapter and in [c]hapter 3.50 of the Revised Code of Washington . . . .").
[20] See Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999) (recognizing "the judicial doctrine expressio unius est exclusio alterius: the expression of one is the exclusion of the other").

Appendix B
Brief of Petitioner, filed in the Court of Appeals, in *City of Auburn v. Dustin B. Gauntt*, Cause Number 64838-1-I, dated July 19, 2010.

NO. 64838-1-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

(King County Superior Court Cause No. 09-1-05321-5 SEA)

CITY OF AUBURN

Petitioner,

V.

DUSTIN GAUNTT,

Respondent,

BRIEF OF PETITIONER

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A. IDENTITY OF PETITIONER

The Petitioner, City of Auburn, hereinafter referred to as the Plaintiff, is the prosecuting jurisdiction of the case on review before this Court.

B. DECISION SUBJECT OF REVIEW

The Plaintiff is asking this Court to review and reverse the decision of the King County Superior Court following the RALJ1 Appeal of the Respondent, Dustin Gauntt, hereinafter referred to as the Defendant, where the Supreme Court reversed the rulings by the Auburn Municipal Court, ruling that the Plaintiff did not have authority to prosecute the Defendant for violations of state law because the state law violations were not adopted by the Plaintiff, City of Auburn.

C. ISSUES PRESENTED FOR REVIEW

The issue before this Court is whether a city may enforce state law without having adopted the state law by reference or having adopted a compatible ordinance. More particularly, the issue, as applied to this case, is whether the City of Auburn is entitled, pursuant to section 39.34.180 of the

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1 Rules for Appeal of Decisions of Courts of Limited Jurisdiction.

Revised Code of Washington (RCW), to charge the Defendants with non-felony crimes occurring within the corporate limits of the City and referred for prosecution by the City's Police Department.

D. STATEMENT OF THE CASE

The Defendant was charged in the Auburn Municipal Court, under its Cause Number C99329, with the crimes of Possession of 40 Grams or Less of Marijuana and Unlawful Use of Drug Paraphernalia. CP 88-89. In these charging documents, the Defendant was charged under state law, not city ordinance, with the crime of Possession of 40 Grams or Less of Marijuana, a misdemeanor contrary to RCW 69.50.4014 [Count 1] and the crime of Unlawful Use of Drug Paraphernalia, a misdemeanor contrary to RCW 69.50.412 [Count 2]. CP 88-89.

While the charges were pending before the Municipal Court, the Defendant brought several motions that were decided in favor of the Plaintiff, City of Auburn, and contrary to the Defendant. CP 17; 48-53. Among those motions was a motion to dismiss challenging the jurisdiction of the Auburn Municipal Court to hear the criminal charges as they were filed under state law, rather than city ordinance. CP 48-53. Thereafter, in light of the adverse

rulings in the Municipal Court wherein the Municipal Court ruled that the City of Auburn was legally authorized to charge the Defendant under state law, the Defendant chose not to take the matter to trial, instead submitted the charges to the Municipal Court pursuant to a Statement of Defendant on Submittal or Stipulation to Facts whereby the police report was to be read by the judge, and based on the evidence therein and other material presented, the judge would decide if the Defendant was guilty of the crimes charged. CP 11.

The police reports, as submitted to the Municipal Court in connection with the Statement of Defendant on Submittal or Stipulation to Facts, indicated facts including the following:

On December 5, 2008, at approximately 4:22 p.m., officers of the Auburns Police Department observed the Defendant traveling within the City of Auburn, using what they recognized as a marijuana pipe to inhale smoke that they suspected to be marijuana smoke. CP 16-17. The police officers stopped the Defendant's vehicle, verified their suspicions and ultimately arrested him, and issued him Citation No. CR099329 for the marijuana and paraphernalia charges. CP 16-17.

As indicated above, during the pendency of the criminal charges before the Municipal Court, the Defendant brought a motion to dismiss

challenging the Municipal Court's authority to hear the criminal charges since they were charged under state law, not under city ordinance. CP 48-53.

Following the Statement of Defendant on Submittal or Stipulation to Facts, submitted on June 8, 2009, and the reading of the police report by the Municipal Court judge, the Defendant was found guilty of both charges, and sentenced on the same date – June 8, 2009. CP 10. The Defendant thereafter appealed the matter to the King County Superior Court under Cause Number 09-1-05321-5 SEA. CP 1-2. The RALJ Appeal Briefing submitted to the Superior Court included the Defendant's RALJ Appeal Brief (CP 108-23) and the City's Responsive RALJ Brief (CP 141-59).

The Superior Court differed from the Municipal Court in its interpretation of Section 39.34.180 RCW, concluding, essentially, that: (1) the Plaintiff was not entitled to enforce state law without having first adopted the state law by reference or having adopted a compatible ordinance; and (2) since the Defendant was prosecuted for a crime under state law, not under code provisions adopted by the City, the findings of guilty were set aside and the case was ordered remanded to the Auburn Municipal Court for dismissal. CP 160-61.

D. SUMMARY OF ARGUMENT

The Superior Court erred in ruling that "the city may not enforce state law without having first adopted the state law by reference or having adopted a compatible ordinance." Such ruling is erroneous because every city is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, regardless of *whether filed under state law or city ordinance.* RCW 39.34.180.

First, the plain statutory language is clear and delegates responsibility to cities to prosecute non-felonies committed by adults within the city's jurisdiction and referred by the city's police, regardless of whether filed under state law or city ordinance. The Superior Court's decision ignores the language of the statute that specifies that the responsibility to prosecute the criminal offenses shall be either by "city ordinance or state law." It further ignores the language of the statute requiring cities to use their own courts, staff and facilities to prosecute these offenses. Second, legislative history supports Petitioner's position that cities have authority to prosecute such offenses, regardless of whether filed under state law or city ordinance. Third,

the Superior Court's interpretation of the statutes leads to absurd results.

Throughout the pleadings and proceedings of this case, the Defendant has continually argued that, pursuant to RCW 39.34.180, in order to be able to charge and prosecute violations under state law, the City of Auburn would have had to have adopted the language of RCW. The Defendant also argues that RCW 39.34.180 really only requires the city to enter into contracts for and pay the county (King County) to prosecute state law violations. These arguments ignore the very language of the statute upon which the Defendant bases his argument. That statute states as follows:

> 39.34.180 Criminal justice responsibilities--Interlocal agreements.
>
> (1) *Each county, city, and town is responsible for the prosecution*, adjudication, sentencing, and incarceration *of misdemeanor and gross misdemeanor offenses committed* by adults *in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance*, and must carry out these responsibilities through the *use of their own courts, staff, and facilities*, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.
> .... (Emphasis added.)

Had the legislature intended (merely intended) that cities shall

contract with counties for prosecution of state law violations occurring within their jurisdictions but not adopted as part of their ordinances, the legislature could have passed a bill that read along the lines of the following:

> Each city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, and must either (1) prosecute such offenses filed under city ordinance, carrying out these responsibilities through the use of their own courts, staff, and facilities, or (2) enter into contracts or interlocal agreements under this chapter with the county to provide these services if filed under state law.[2]

However, again, that is not what the statute says. Moreover, it ignores specific language included in the statute (RCW 39.34.180) that states:

> Each ... city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, *whether filed under state law or city ordinance*, and must carry out these responsibilities through the *use of their own courts, staff, and facilities* . . . . RCW 39.34.180

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2 To illustrate how this language differs with the current language of RCW 39.34.180, the changes from the statute are set forth with underlining and strike throughs, as follows:

Each ~~county,~~ city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, and must either (1) prosecute such offenses ~~whether~~ filed under ~~state law or~~ city ordinance, ~~and must carry~~carrying out these responsibilities through the use of their own courts, staff, and facilities, or (2) ~~by entering~~ enter into contracts or interlocal agreements under this chapter with the county to provide these services if filed under state law.

It is curious and ironic that both Plaintiff and Defendant argue same statute for the support of their position, but it is bewildering how the Defendant can argue his theory which necessarily ignores a significant portion of the language of the statute. The rules of statutory construction call for all language of the statute to be included, and in interpreting and determining the meaning of a statute, no language is to be deemed meaninglessness and superfluous.

When read in its entirety, the language of RCW 39.34.180 gives two options for cities to address criminal violations of law committed within their jurisdictions when charged under state law, rather than city ordinances; (1) enter into a contract with the county in which the city is located (in which the violation occurred) for the prosecution of such violations, whereby the county would prosecute and the city would pay for prosecution; or (2) prosecute the violations using the city's own resources and facilities, charging the violations under state law (either under state law or under city ordinance).

The purpose of the statute was to make sure that the responsibility for charging violations occurring within city jurisdictions fell upon those cities, either providing the prosecution directly or contracting with the county for prosecution. Particularly since the city would not have authority to charge

a violation of law under city code that was not within its city codes when the violation occurred, in such an instance, the only choices available to the city to address such violations would be to either contract with the county or charge under state law, using its own municipal court and resources. If the Defendant were correct, and the only option currently available to the city would be to contract with the county for prosecution services, if the county declined to enter into such a contract (if for what ever reasons the city and the county could not reach an agreement, including the county's decision that it did not want to enter into such agreements, a choice it could make, as noted by the State Attorney General) the violations of law would be unable to be prosecuted. That does not make sense. Statutory construction also mandates that statutes not be construed so as to create an absurdity.

The only realistic and consistent interpretation of, RCW 39.34.180 is that it requires cities to be responsible for prosecution of them on felony crimes occurring within their jurisdiction and referred for prosecution by their police departments, whether contracting with the county for prosecution services for such offenses or prosecuting the offenses themselves, using their own resources and court facilities, again whether charged under state law or city ordinance.

E. ARGUMENT

1. STANDARD OF REVIEW

Interpretation of statute is question of law and thus must be reviewed *de novo*. *City of Montesano v. Wells*, 79 Wn. App. 529, 902 P.2d 1266 (1995). In interpreting a statute, the appellate court's primary goal is to give effect to legislative intent; thus, the court construes the statute in a manner that best advances the perceived legislative purpose. *Id.* The case at bar requires the Court to interpret RCW 39.34.180. Therefore, the Court must review the case *de novo*.

2. STATUTORY LANGUAGE OF CHARGED OFFENSES

The statutory language of the two criminal offenses with which the Defendant was charged and convicted (Possession of 40 Grams or Less of Marijuana, RCW 69.50.4014 and Unlawful Use of Drug Paraphernalia, RCW 69.50.412) states as follows:

> 69.50.4014 Possession of forty grams or less of marihuana -- Penalty.
>
> Except as provided in RCW 69.50.401(2)(c), any person found guilty of possession of forty grams or less of marihuana is guilty of a misdemeanor. [2003 c 53 § 335.]
>
> 69.50.412 Prohibited acts: E -- Penalties. (Drug Paraphernalia)
>
> (1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,

prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases. [2002 c 213 § 1; 1981 c 48 § 2.] [3]

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3 It should also be noted that pursuant to RCW 69.50.608, the state law preempts issues relating to controlled substances. But that would not preclude prosecution by a city either under state statute or city ordinance unless the city ordinances were in conflict with that we law. That statute states as follows:

69.50.608 State preemption

The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided

There is no dispute that the facts of this case are sufficient to meet the evidentiary requirements for conviction; certainly no argument has been presented, other than the Defendant's argument that certain evidence should have been excluded or that certain motions should have been decided differently.

3. PLAINTIFF'S AUTHORITY TO PROSECUTE VIOLATIONS

Contrary to what the Defendant has argued, the Plaintiff has statutory authority to prosecute the violations charged in this case. Even where the City of Auburn had not adopted Ordinances incorporating Sections 69.50.412 or 69.50.4014 RCW, the City of Auburn would still have jurisdiction and responsibility to prosecute misdemeanor and gross misdemeanor violations of State Statutes, including RCW 69.50.412 and 69.50.4014 occurring within its jurisdiction and referred from its law enforcement agency. That authority and responsibility comes from RCW 39.34.180, which reads, in full, as follows:

> 39.34.180 Criminal justice responsibilities--Interlocal agreements.
>
> (1) *Each county, city, and town is responsible for the*

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for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.

prosecution, adjudication, sentencing, and incarceration *of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance*, and must carry out these responsibilities through the *use of their own courts*, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as

> defined by state law, this section shall have no application until July 1, 1998. [2001 c 68 § 4; 1996 c 308 § 1.] (Emphasis added.)

This statute carries a very strong mandate. Every city, including Auburn, is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, regardless of *whether filed under state law or city ordinance*. Arguably, that statute makes unnecessary or relieves cities from even enacting criminal codes as the jurisdiction and responsibility is conveyed without the need of adopting any ordinance. That jurisdiction and responsibility is not incompatible with the authority of municipal courts either. The language of RCW 39.34.180 which indicates that *cities "must" carry out these responsibilities through the use of their own courts, staff, and facilities*, is compatible with the language of RCW 3.50.020, which deals with the jurisdiction of municipal courts, as the statute speaks to jurisdiction in terms of that which is conferred by statute. RCW 3.50.020 provides as follows:

> 3.50.020 Jurisdiction.
> The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city in which the

> municipal court is located and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. *The municipal court shall also have the jurisdiction as conferred by statute.* The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. (Emphasis added.)

RCW 39.34.180 certainly conferred that jurisdiction, in that it demands that cities ***must carry out these responsibilities*** through the ***use of their own courts, staff, and facilities***. According to this statute, regardless of whether the City had its own criminal code, or whether it adopted a criminal code by adopting State Statutes by reference, or whether it has a criminal code at all, and regardless of whether the City has its own Municipal Court or files its cases in the District Court, the City has the authority to prosecute violations of the marijuana and paraphernalia crimes, and it, in fact, has the responsibility for prosecuting such violations as long as the offenses occurred within its corporate boundaries and its own law enforcement agency initiated the investigation.

Ironically, the Defendant has previously argued in this case that this authority deals only with the responsibility to pay the county for prosecuting offenses. Such a conclusion would make no sense in light of the language

calling for use of the city's own court, staff and facilities. Rather, the requirement to contract with and pay the county anything only comes into play if a city does not prosecute such offenses - regardless of whether filed under state law or city ordinance - through the use of its own courts, staff, and facilities.[4]

Similarly argued by the Defendant, Plaintiff notes that *no word of a statute should be deemed superfluous, void or insignificant.* In attempting to give effect to the intent of the legislature, an act must be construed as a whole, harmonizing all provisions to ensure proper construction. *Kasper v. City of Edmonds*, 69 Wn.2d 799, 804, 420 P.2d 346 (1966) (*quoting Groves v. Meyers*, 35 Wn.2d 403, 407, 213 P.2d 483 (1950)). *See also Powell v. Viking Insurance Company*, 44 Wn. App. 495, 722 P. 2d 1343 (1986). However, the construction argued by the Defendant would leave the language stating that cities *must carry out these responsibilities through the use of their own courts, staff, and facilities* as completely meaningless, void and superfluous.

---

4 Again, RCW 39.34.180 states that cities are responsible for prosecuting the criminal violations referred by its police – whether charged under city ordinance or state law – and must use of its own court, staff and facilities ***or*** by entering into contracts or interlocal agreements under this chapter to provide these service. (Emphasis added.)

4. LEGISLATIVE HISTORY SUPPORTS PETITIONER'S ARGUMENT

The court may turn to legislative history and relevant case law to discern the legislature's intent if the plain meaning analysis fails to resolve the question before the court. *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

RCW 39.34.180 carries a very strong mandate. Every city, including Auburn, is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, regardless of *whether filed under state law or city ordinance*. Essentially, that statute makes unnecessary or relieves cities from even enacting criminal codes as the jurisdiction and responsibility is conveyed without the need of adopting any ordinance.

RCW 39.34.180 was promulgated in response to the experience of several cities that were choosing to repeal or significantly pare down their criminal codes, ostensibly leaving the responsibility for prosecution on counties. The FINAL BILL REPORT - SSB 5472 Ch 68 Laws of 2001 (relating to terminating municipal courts) gave a brief description of the

history of RCW 39.34.180, as follows:

> **Background:** In the early 1980s there was concern that some municipalities were terminating their court system, or repealing those portions of their criminal codes that were expensive to enforce while retaining portions of the civil code that generated moneys for the city, and in effect transferring the cost of prosecution, adjudication, and sentencing of criminal cases to the counties.

To prevent that phenomenon from continuing, the Legislature mandated the responsibility upon cities to either prosecute those violations – using its own courts and resources – or contracting with the county for prosecution services. This was consistent with the provisions of RCW 3.50.800 and 3.50.805, which preclude cities from repealing their criminal codes in their entirety. But *even if* a city *did not entirely repeal* its criminal code, RCW 39.34.180 still imposed on cities the responsibility to either prosecute those non-felony criminal violations referred by their police using its own court or pay the county to do so, and this is true regardless of whether the violations are charged under state law or city ordinance. The fact that the statute was inserted into RCW Chapter 39 and not elsewhere was a decision made by the Code Reviser and not the Legislature, as the initial bill could have been placed in several chapters in the RCW.

Additionally, the Original SENATE BILL REPORT for SB 6211, as

reported by the Senate Committee on Government Operations, January 31, 1996, (ultimately passed as ESSB 6211 – Ch 308 Laws of 1996 [the bill that first promulgated RCW 39.34.180], described the bill as requiring each county, city or town to be responsible for the costs incident to misdemeanors and gross misdemeanor offenses occurring in their respective jurisdictions. The only *exception* to this (responsibility) is by contract or interlocal agreement. *See also* SENATE BILL REPORT ESSB 6211 as Passed by the Senate, February 12, 1996. These bill reports describe the contracts (interlocal or otherwise) as the exception to a city being directly responsible for prosecution of misdemeanors and gross misdemeanor offenses occurring in their respective jurisdictions – regardless of whether the charges are filed under city ordinance or state law.

Furthermore, HOUSE BILL REPORT ESSB 6211, as passed by the House – amended February 29, 1996, gave as a summary of ESSB 6211 the following:

> **Summary of Bill:** It is clarified that each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanors committed by adults within their respective jurisdictions who are referred from their respective law enforcement agencies. This responsibility applies if the action is filed under state law or city ordinance. Each county, city, or town must carry out this responsibility through the use of its own courts, staff, and facilities, or enter into

contracts or interlocal agreements to provide these services.

Legislative history confirms that RCW 39.34.180 presents two options for cities to meet the responsibility of prosecuting these offenses (whether under state law or city ordinance): the city must either prosecute them through its own resources, including use of its own court, or must pay the county to do so.

5. APPLYING THE SUPERIOR COURT'S INTERPRETATION OF STATUTE WOULD LEAD TO ABSURD RESULTS.

There is nothing in RCW 39.34.180 that would mandate a county to necessarily agree to provide prosecution services for a city. *See* Attorney General Opinions - AGO 2000 NO. 2 and AGO 2006 NO. 11. These opinions conclude that RCW 39.34.180 does not obligate a county to enter into a contract with a city or town to handle, through the county's court system, misdemeanor cases referred from the city or town's law enforcement officers.

This gives rise to the most compelling argument in favor of the Petitioner's position with respect to the statute. If, as the Superior Court has ruled, a city cannot prosecute violations under state law in its own court, then if the city had not adopted the criminal statute by ordinances, and if the county was unwilling to prosecute the violation on the city's behalf, such

violations would be completely immune from prosecution. Even if the city should be forced to adopt the state law provisions (if the city hasn't already adopted the statute by reference), subsequent adoption would not apply ex post facto to the prior violations.

Courts are to avoid reading statutes in ways that will lead to absurd or strained results. *Wright v. Jeckle*, 158 Wn.2d 375, 379-80, 144 P.3d 301 (2006). It would be a strained or absurd result if the statutes meant that cities are responsible for prosecuting criminal offenses, but they must have adopted the relevant state criminal statutes by ordinance, and yet counties cannot be required to enter into contracts with cities.

F. CONCLUSION

For the foregoing reasons, this Court should reverse the Superior Court's ruling that "the City may not enforce state law without having first adopted the state law by reference or having adopted a compatible ordinance." The decision of the Superior Court in this case is contrary to the plain language of the statute and ignores the rules of statutory construction. The Superior Court's approach in implementing RCW 39.34.180 is also highly inconsistent with the accepted and usual course of judicial

proceedings. If allowed to stand, the Superior Court's ruling would impair the ability of the criminal justice system to operate efficiently and consistently.

Respectfully submitted this 19th day of July, 2010.

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Appendix C
Brief of Respondent, filed in the Court of Appeals, in *City of Auburn v. Dustin B. Gauntt*, Cause Number 64838-1-I, dated August 16, 2010.

No. 64838-1-I

King County Superior Court
Cause No. 09-1-05321-5 SEA

IN THE COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

CITY OF AUBURN

Petitioner

v.

DUSTIN GAUNTT

Respondent

BRIEF OF RESPONDENT

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A. STATEMENT OF THE CASE

The Respondent agrees with Petitioner's statement of the case with one caveat. The Petitioner indicates that it charged the Respondent under state law. The Petitioner fails to mention that they had not adopted that state law by reference as part of their criminal code.

B. ARGUMENT

The City cannot prosecute violations of laws that they have not enacted.

The Washington State Constitution requires the City of Auburn to only prosecute for crimes that are codified in its city code. Art. XI, § 11 grants counties, cities and towns the authority to make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws. This provision grants the City the authority to make and enforce laws. It is a long standing rule of statutory construction that every word is to be given meaning. State ex rel. Banker v. Clausen, 142 Wash. 450 (Wash. 1927). The City is attempting to enforce law that it has not enacted, and in doing so, fails to give meaning to the phrase "make and enforce" and therefore falls beyond its constitutionally granted authority. See Brown v. Cle Elum, 145 Wash. 588 (Wash. 1927).

RCW 39.34.180 does not grant the City of Auburn the authority to prosecute violations of criminal offenses not adopted by its city code. RCW 39.34.180 provides as follows:

(1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the

services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) A city or county that wishes to terminate an agreement for the provision of court services must provide written notice of the intent to terminate the agreement in accordance with RCW 3.50.810 and 35.20.010.

(5) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998. The City argues that since it has the responsibility under RCW 39.34.180(1) to prosecute, adjudicate, sentence, and incarcerate misdemeanor and gross misdemeanor offenses committed by adults in its respective jurisdictions and referred to its law enforcement agencies, that it has the authority to charge crimes not adopted by its criminal code. It bases this argument on the phrase: "whether filed under state law or city ordinance." The City is of the belief that "filed under state law" gives it the authority to enforce laws that it has not made.

The petitioner is incorrect in its position. There is no language in this statute that grants cities and towns the authority to enforce any non-felony criminal laws regardless of whether the laws are found in the city code. The absence of such language makes it clear that the intent of the legislature was not to relieve the cities of their constitutional obligation to make laws. Instead as will be examined at length below, the intent of RCW 39.34.180 is to apportion financial responsibility for non-felony

law enforcement with cities.

An examination of RCW 35.20.250 is instructive. This statute grants cities larger than 400,000 people (Seattle) concurrent jurisdiction with the district court. Money collected under this authority is deposited in the county treasury. Id. By limiting concurrent jurisdiction to cities of populations in excess of 400,000, the legislature must be understood to have intentionally denied concurrent jurisdiction to the City of Auburn. Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim expressio unius est exclusio alterius--specific inclusions exclude implication. Landmark Dev., Inc. v. City of Roy, 138 Wn.2d 561, 571 (Wash. 1999).

RCW 3.50.100(1) is another statute which is at odds with the petitioner's position. It provides as follows:

> (1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs, fines, forfeitures and other money imposed by any municipal court for the violation of any municipal or town ordinances shall be collected by the court clerk and, together with any other noninterest revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or

deposited in such other funds as may be designated by the laws of the state of Washington.

This section authorizes the municipal court to collect money associated with violations of municipal or town ordinances. The legislature, when granting concurrent jurisdiction to the City of Seattle, specifically stated that money collected by Seattle, when exercising concurrent jurisdiction, is to be deposited in the county treasury. Under 3.50.100(1) the Auburn Municipal Court would not be able to collect any fines from the Respondent because he would not be in violation of any municipal ordinance. If the legislature intended for the city to prosecute offenses other than city ordinances, it would have so stated and would have provided guidance in regard to collecting money. Landmark at 571.

The City of Auburn operates its own municipal court, is in possession of a criminal code, and therefore meets the responsibility of RCW 39.34.180. See RCW 3.50.815.

As noted above, it was not the legislative purpose of RCW 39.34.180 to allow cities and towns to prosecute crimes they have not included in their respective criminal codes. In construing this statute, the court should seek to find the legislative intent, and to give effect to the

legislative purpose. Rounds v. Union Bankers Ins. Co., 22 Wn. App. 613, 616 (Wash. Ct. App. 1979). The legislative intent is to be derived from the statute as a whole and not from a single sentence or solitary paragraph. Id. Thus, in interpreting statutes, legislative intent is to be ascertained from the statutory text as a whole, interpreted in terms of the general purpose of the act. Id.

Every statute and every word within a statute is there for a purpose and is to be given meaning. City of Spokane Valley v. Spokane County, 145 Wn. App. 825, 832 (Wash. Ct. App. 2008). No portion of a statute is to be rendered superfluous. Id. Title 39 of the Revised Code of Washington is entitled Public Contracts and Indebtedness. Section 34 is entitled the Interlocal Cooperation Act. The purpose of the Cooperation Act is set forth in RCW 39.34.010 and states as follows:

> It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

The various sections of RCW 39.34 provide for and regulate the various agreements that governmental units may enter into.

RCW 39.34.180 is entitled Criminal justice responsibilities — Interlocal agreements — Termination. This section consists of 5 subsections. Subsection 1, which is the section that the City is relying upon, is the section that places of the burden on counties, cities and towns to be responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions[1]. The statute goes on to state that these responsibilities may be met through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Subsection 2 sets out what principles must be followed in entering into interlocal agreements. Subsection 3 sets out the procedures to be utilized if an agreement cannot be reached between the contracting entities. Subsection 4 discusses how these agreements are to be terminated. Subsection 5 makes it clear that any city or town that has not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, must either enter into an interlocal agreement or adopt a criminal code by July 1, 1998. There is nothing in this enactment that specifically authorizes a city or town to enforce laws that they have not made. This

provision is not intended to confer jurisdiction but to delineate monetary responsibility. RCW 39.34 et. seq. is, after all, the Interlocal Cooperation Act[2].

The legislature is clearly stating that jurisdictions that are trying to avoid their economic obligations for all stages of law enforcement are not going to be allowed to do so. In fact, RCW 3.50.815 clearly states for courts not operating their own municipal court, that a city may meet the requirement of RCW 39.34.180 by entering into an agreement with the county or one or more city. Cities and towns either need to operate their own courts or enter into an interlocal agreement with the county or other cities and towns for court services. In the situations where the city chooses to not operate its own court or/and adopt a criminal code, it needs to make arrangements to pay for the costs for those things that are outlined in RCW 39.34.180(1). In situations where there is no criminal code, the city or town must enter into an interlocal agreement with the local county to pay for criminal justice services, i.e. cases filed under state law. Auburn is not a jurisdiction trying to avoid its responsibilities to pay for its share of the criminal justice system and therefore RCW 39.34.180(1) is not applicable to this case[3].

Every word in every statute is presumed to be there for a reason. Statutes are not to be read in a manner inconsistent with the legislative purpose. City of Kent v. Beigh, 145 Wn.2d 33, 40 (Wash. 2001); Rounds v. Union Bankers Ins. Co., 22 Wn. App. 613, 616 (Wash. Ct. App. 1979). The legislative intent is to be derived from the statute as a whole and not from a single sentence or solitary paragraph. Rounds at 616. Thus, in interpreting statutes, legislative intent is to be ascertained from the statutory text as a whole, interpreted in terms of the general purpose of the act. Id. If the city is correct, and the legislature intended for the city to enforce state statutes that have not been incorporated into the city code, there would be a host of statutes rendered superfluous. The legislative intent under the circumstances here is abundantly clear.

RCWs 35.22.425, 35.23.555, 35.27.515, 35.30.100, and 3.50.805 all mandate that a city operating a municipal court may not repeal in its entirety that portion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county (Chapter 39.34 RCW) under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. The agreement shall include provisions for periodic review and renewal of the

terms of the agreement. If the municipality and the county are unable to agree on the terms for renewal of the agreement, they shall be deemed to have entered into an agreement to submit the issue to arbitration under chapter 7.04A RCW. Pending conclusion of the arbitration proceeding, the terms of the agreement shall remain in effect. The municipality and the county have the same rights and are subject to the same duties as other parties who have agreed to submit to arbitration under chapter 7.04A RCW. If the city may enforce criminal violations that are not part of its code, why would the legislature enact a statute requiring cities not to repeal their respective codes? The legislative intent and purpose is clear. The legislature does not want cities and towns to shirk their criminal justice responsibilities by attempting to pass the costs off to other jurisdictions.

The City of Auburn's municipal court was created pursuant to RCW 3.50. ACC 2.14.020.[4]

RCW 3.50.020 provides as follows:

> The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. A hosting jurisdiction shall have exclusive original

> criminal and other jurisdiction as described in this section for all matters filed by a contracting city. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

Clearly this statute requires that cities prosecute individuals for violations of city ordinances. If the city's position were well-founded, the legislature could have simply said that the municipal court shall have exclusive original jurisdiction over traffic infractions and criminal violations, not amounting to felonies, occurring within the city's boundaries. This, of course, would render parts of the above-referenced statutes superfluous.

The City of Auburn is a Non Charter Code City, pursuant to RCW 35A.02. ACC 1.08.010. The City is a mayor-council government. Id. RCW 35A.11 sets out the laws governing non charter cities. RCW 35A.11.020, in its pertinent part, states that a legislative body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and

may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. This statute raises two issues in regard to the petitioner's position. One is a separation of powers issue. The second issue involves superfluous words in a statute. If RCW 39.34.120 removes the requirement of a city to adopt an ordinance, why did the legislature require the city to provide for the same penalty for the same crime under state law?

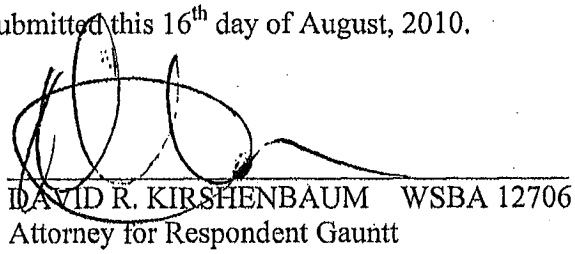
Finally, the Washington State Constitution does not contain a formal separation of powers clause, but the very division of our government into different branches has been presumed throughout our state's history to give rise to a vital separation of powers doctrine. Putman v. Wenatchee Valley Med. Ctr., PS, 166 Wn.2d 974, 980 (Wash. 2009). The doctrine of separation of powers divides power into three coequal branches of government: executive, legislative, and judicial. Id. The doctrine does not depend on the branches of government being hermetically sealed off from one another but ensures that the fundamental

functions of each branch remain inviolate. Id. If the activity of one branch threatens the independence or integrity or invades the prerogatives of another, it violates the separation of powers. Id. In this case, if the city's position were adopted, the city prosecutor, representing the executive branch of government, would be impinging on the city council's ability to determine which crimes it wants prosecuted within the city limits of Auburn. This would be a violation of the separation of powers doctrine.

C. CONCLUSION

Respondent's interpretation of the various statutes involved with this case is consistent with the state Constitution, does not render any word in any statute superfluous, and gives effect to the legislative purpose of RCW 39.34.180. The Superior Court should be affirmed.

Respectfully submitted this 16th day of August, 2010.



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[1] RCW 39.34.180 provides as follows: Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, **and referred from their respective law enforcement agencies** [emphasis added], whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

[2] See also RCW 39.50.800 which provides If a municipality has, prior to July 1, 1984, repealed in its entirety that portion of its municipal code defining crimes but continues to hear and determine traffic infraction cases under chapter 46.63 RCW in a municipal court, the municipality and the appropriate county shall, prior to January 1, 1985, enter into an agreement under chapter 39.34 RCW under which the county is to be paid a reasonable amount for costs incurred after January 1, 1985, associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal. If the city is operating a municipal court, and petitioner's argument has merit, why would the city need to enter into an agreement with the county? Shouldn't they simply be able to start prosecuting people for violations of non felony crimes listed in the RCWs since according to petitioner they do not need to adopt a criminal code because they have the "responsibility" to prosecute under RCW 39.34.180. This interpretation of course would render all of RCW 3.50.800 superfluous.

[3] There is nothing in the language of RCW 39.34.180(1) that grants a city or town the authority to enforce RCWs. The legislature is presumed to know the law. Since there is a statute that grants concurrent jurisdiction to the City of Seattle (which enables the City to prosecute violations of RCW occurring with the city limits of Seattle, and there is no similar provision for any other city or town) the presumption is that the legislature specifically intended not to grant this authority. See City of Seattle v. Briggs, 109 Wn. App. 484 (Wash. Ct. App. 2001) and RCW 35.20.250.

[4] A. The municipal court shall have jurisdiction and shall exercise all powers enumerated in this chapter and in Chapter 3.50 of the Revised Code of Washington, existing or amended at or after the effective date of the ordinance codified in this chapter, together with such other powers and jurisdiction as are generally conferred upon such court in the state of Washington either by common law or by express statute.

B. The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city. The municipal court shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. The municipal court shall also have the jurisdiction as conferred by state statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. ACC 2.14.020.

Appendix D
Reply Brief of Petitioner, filed in the Court of Appeals, in *City of Auburn v. Dustin B. Gauntt*, Cause Number 64838-1-I, dated September 20, 2010.

NO. 64838-1-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

(King County Superior Court Cause No. 09-1-05321-5 SEA)

CITY OF AUBURN
Petitioner,

V.

DUSTIN GAUNTT,
Respondent,

REPLY BRIEF OF PETITIONER

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A. IDENTITY OF PETITIONER

The Petitioner, City of Auburn, hereinafter referred to as the City, the prosecuting jurisdiction of the case on review before this Court, respectfully submits the following as its Reply to the Brief of Respondent, Dustin Gauntt, hereinafter referred to as the Defendant.

B. REPLY TO BRIEF OF RESPONDENT

In the Defendant's response to the City's Brief of Petitioner, the Defendant agreed with the facts as stated by the City with one caveat; that the City did not mention that the City of Auburn had not adopted the state law that was charged in this case. (Brief of Respondent, page 1.)

In his Response, the Defendant essentially describes the issue before this Court as whether a city may enforce state law without having adopted the state law by reference or having otherwise incorporated the state law into its municipal codes. From the City's perspective, the issue is whether the City of Auburn is entitled, pursuant to Section 39.34.180 of the Revised Code of Washington (RCW), to charge the Defendant with non-felony crimes occurring within the corporate limits of the City and referred for prosecution by the City's Police Department, under state law, regardless of whether the City adopted the state statute by ordinance into its municipal code.

In his argument, the Defendant relies on the language of Article XI § 11 of the Washington State Constitution, arguing that the City cannot prosecute violations of laws that the City has not adopted or enacted. Article XI § 11 of the State Constitution states as follows:

> Article XI § 11. Police and Sanitary Regulations
> Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

The Defendant hitches his argument to the language of that singular section of the state constitution, and more specifically, to the language that says a "city... may *make and enforce* ... such local police, sanitary and other regulations .... (Art. XI § 11, Wash. Const., emphasis added.)

The Defendant argues in that regard that the "make and enforce" language can only be construed as requiring the city to adopt ordinances it wishes to enforce. However, if the Court were to adopt the Defendant's argument, it would in essence, deem the language of Art. XI § 11, Wash. Const. as the only source of municipal authority, and, further, construing it to mean "a city may only enforce ... such local police, sanitary and other regulations it makes (adopts)." In order to reach the conclusion the Defendant seeks, the Court would have to ignore other provisions of the

State Constitution, as well as ignore statutory provisions. That would include ignoring the specific language set forth in section 39.34.180 RCW.

The Defendant argues, in support of his argument, that in order to render the language of Art. XI § 11, Wash. Const. meaningful (giving every word importance) the language of this constitutional provision must mean that "a city may only enforce ... such local police, sanitary and other regulations as it makes (adopts)," and anything other than that renders the "make and enforce" meaningless. The plain language of this constitutional provision is not ambiguous - it doesn't need to be interpreted at all, and if it does, the court should adhere to its general reluctance to add or subtract words unless necessary. "[I]f a constitutional provision is plain and unambiguous on its face, then no construction or interpretation is necessary or permissible." *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, 650, 211 P.3d 406 (2009). Moreover, the suggestion by the Defendant that Art. XI § 11 Wash. Const. should be interpreted this way creates a conflict among other constitutional provisions as well as a clear incongruity with statutory language. While the Defendant seemingly argues rules of statutory construction, he really only wishes to apply them to Art. XI § 11, and then only with his interpretation: "the only way a city can enforce a regulation is if the city adopted the regulation by ordinance." The fact of the matter is that while

Art. XI § 11 Wash. Const. does authorize cities to make and enforce regulations, it does not say that the legislature cannot empower cities to take action through a different route.

The rules of statutory construction apply to statutes, and so long as the statute is consistent with state law it should be upheld. Statutes are presumed valid and the burden rests on the challenger to show otherwise. *State v. Branch*, 129 Wn.2d 635, 648, 919 P.2d 1228 (1996), citing *Louthan v. King County*, 94 Wn.2d 422, 428, 617 P.2d 977 (1980). The burden to show such invalidity is a heavy one. As noted by the Court in *Sofie v. Fibreboard Corp.* 112 Wn.2d 636, 643, 771 P.2d 711 (1989) [citing *State v. Ide*, 35 Wash. 576, 77 P. 961 (1904)];

> [I]t is settled by the highest authority that a legislative enactment is presumed to be constitutional and valid until the contrary clearly appears. In other words, the courts will presume that an act regularly passed by the legislative body of the government is a valid law, and will entertain no presumptions [against] its validity. And, when the constitutionality of an act of the legislature is drawn in question, the court will not declare it void unless its invalidity is so apparent as to leave no reasonable doubt upon the subject.... (Citations omitted.)

Sofie v. Fibreboard Corp. 112 Wn.2d at 643 also quotes *Spokane v. Coon*, 3 Wn.2d 243, 246, 100 P.2d 36 (1940), stating "every presumption is in favor of the constitutionality of a law or ordinance." Put another way, the Court in *Sofie v. Fibreboard* said "if any state of facts

can reasonably be conceived to uphold the legislation ... the legislation will be upheld." *Id.*

Additionally, the Defendant's argument is misdirected by its singular focus on Article XI § 11 of the Washington Constitution. Not only does that constitutional provision not say what the Defendant thinks it does (that the only way a city can enforce a law is by having adopted it), although adoption is certainly one avenue through which enforcement could be authorized), Article XI § 11 does not exclude avenues created by other constitutional provisions or by enactments of the legislature. The Defendant's argument ignores the well established concept that cities are creatures of the legislature and thus the legislature can enact statutes that give authority in excess of the limited language of Article XI § 11.

The City's powers are derived from the state legislature. *Othello v. Harder*, 46 Wn.2d 747, 284 P.2d 1099 (1955). So long as the authority granted by the state legislature is consistent with the general law, the Constitution does not limit the legislature from taking action which expands the authority of cities beyond what was contemplated or included in the language of the Constitution. That cities are creatures of the sovereign state may be seen from Article XI § 10, of the state constitution which says that the legislature shall provide for the incorporation and organization of cities and that all city charters shall be subject to and

controlled by general laws. *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 676, 409 P.2d 458 (1965). Article XI § 10 of the state constitution states, in pertinent part, as follows:

> Article XI § 10. Incorporation of Municipalities
> Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to and controlled by general laws. .... (Emphasis added.)

Clearly this Article includes and contemplates that statutes affecting cities can change. Essentially, what the Defendant's argument indicates is that the legislature cannot add to or subtract from what the defendant argues is the authority set forth in Article XI section 11 of the state constitution.

The courts do not interpret statutes – legislative enactments – to render portions of their language meaningless. *See, e.g., State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (in turn citing *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)).

The Defendant argues that RCW 39.34.180 does not grant a city authority to prosecute under state law, but instead, requires a city to enter into contracts with the county for prosecution of crimes not adopted by the city. This argument ignores the language of the statute that says:

> Each ... city ... is responsible for the prosecution, adjudication, sentencing and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, *whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts* ***or*** interlocal agreements under this chapter to provide these services. (Emphasis added.)

Particularly where the contract language is separated (separated by an "or"), the contract is an option distinct and different from the prosecution. Additionally, particularly since the county has no authority that would allow the county to usurp and use city courts and facilities (no such authority has been presented by the Defendant and none exists in this state for the county to do so), the Defendant's argument makes no sense if that language is to be given any effect at all. No matter how the above cited language of RCW 39.34.180 is twisted or contorted, in order to reach the conclusion of the Defendant's argument, language must be ignored or changed. Below is an example of how the language of RCW 39.34.180 would have to be construed in order to reach the Defendant's conclusion:

> Each ... city ... is responsible for the prosecution, adjudication, sentencing and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, ~~whether~~ filed under ~~state law or~~ city ordinance, ~~and must~~ carrying out these responsibilities through the use of their own courts, staff, and facilities, or filed under state law by entering into contracts or interlocal agreements under this chapter to provide these services.

Even if the same or similar words are used, the meaning is changed with the re-arrangement of the statute's words. Unfortunately for the Defendant, the changed language does not say what the statute says. Changing the order of words in a statute, replacing some and deleting others are not consistent with statutory construction. Additionally, in reviewing statutory language, the court looks to the statute's plain meaning in order to fulfill its obligation to give effect to legislative intent. *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). To do so, the court neither adds language to nor construes an unambiguous statute. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006).

The Defendant also argues that the jurisdiction and authority of the court is limited by the provisions of Chapter 3.50 RCW. Specifically, on pages 5 and 6 of the Defendant's Brief, he argues that a city is [only] authorized to collect monies associated with violations of municipal or

county ordinances. While cities and their municipal court certainly have authority to enforce city ordinances, that is not an exclusive authorization under the statutes. For instance, RCW 46.08.190 expressly authorizes municipal court judges to act with jurisdiction over "all [non-felony] violations of the provisions of 'this title.'" Obviously, this title refers to Title 46 RCW, state law not city ordinance. The very fact that a statute gives a municipal court judge authority over state law – non-felony violations of Title 46 RCW – shows the defect in the Defendant's argument. The language of RCW 46.08.190 states as follows:

> 46.08.190. Jurisdiction of judges of district, municipal, and superior court
>
> Every district and municipal court judge shall have concurrent jurisdiction with superior court judges of the state for all violations of the provisions of this title, except the trial of felony charges on the merits, and may impose any punishment provided therefor.

Since a municipal court judge's authority is limited to the municipal court, it cannot be said that this enactment does anything other than authorize enforcement by a municipal court of state law – non-felony violations of Title 46 RCW. Not only does RCW 46.08.190 give concurrent jurisdiction over state law (Title 46 RCW), it does so without any requirement that the municipality for whom the municipal court judge works adopt any ordinance. This statute, consistent with the City of Auburn's argument, shows the folly of the Defendant's argument and the

Defendant's interpretation of RCW 3.50.100(1). Also inconsistent with the Defendant's argument is the fact that other statutes similarly impose an enforcement responsibility upon cities regardless of whether or not the city adopted any ordinance. For instance, RCW 19.27.050 directs that the "state building code" required by this chapter [Chapter 19.27 RCW – state law] shall be enforced by the counties and cities.

Even aside from RCW 39.34.180, because both Title 46 RCW and Chapter 19.27 RCW include criminal enforcement elements that would need to be enforced, the Defendant is patently incorrect when he argues that there is no statutory language that grants cities and towns authority to enforce any non-felony criminal laws regardless of whether the laws are found in the city code. (Brief of Respondent, page 4.) The fact is that the cited examples – RCW 19.27.050, 39.34.180 and 46.08.190 – are three examples where the legislature has done exactly that, something the legislature is entitled to do with cities. Again, cities are creatures of the state, and their powers are derived from the state legislature. *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 676, 409 P.2d 458 (1965).

C. CONCLUSION

For the foregoing reasons, and for the reasons set forth in Plaintiff's Brief of Petitioner, it is respectfully requested that this Court reverse the Superior Court's ruling.

Respectfully submitted this 20th day of September, 2010.

Daniel B. Heid, WSBA # 8217
Attorney for Petitioner, City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Tel: (253) 931-3030

Appendix E

Order Reversing Lower Court's Decision and Remanding to Lower Court for Dismissal with Prejudice, in *City of Auburn v. Dustin B. Gauntt*, King County Superior Court Cause Number 09-1-05321-5 SEA, issued by the Honorable Michael J. Trickey, dated January 8, 2010.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CITY OF AUBURN, Plaintiff/Respondent, vs. DUSTIN GAUNTT, Defendant/Appellant.	NO. 09-1-05321-5 SEA ORDER REVERSING LOWER COURT'S DECISION AND REMANDING TO LOWER COURT FOR DISMISSAL WITH PREJUDICE

This matter having come on regularly for oral argument, the parties being represented by counsel, and the Court being fully advised in the premises, it is hereby ORDERED:

X 1. The City may not enforce state law without having first adopted the state law by reference or having adopted a compatible ordinance. Since the defendant was prosecuted for an ~~ordinance~~ crime not adopted by the City, the finding of guilty is hereby set aside and this case is remanded to the Auburn Municipal Court for dismissal.

____ 2. That the stop of the defendant's vehicle was ~~an unlawful~~ Not a X pretext stop ~~and therefore all other evidence should have been suppressed and this matter is now remanded to the Auburn Municipal Court for dismissal.~~

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_____ 3. The demanding of the Defendant/Appellant to hand over his pipe prior to being read his Miranda rights did not violate ~~violated~~ his constitution right under the 5th Amendment of the United State Constitution, and Article 1 Section 9 of the Washington Constitution ~~and therefore was a non-Mirandized testimonial act and all evidence derived from that act should have been suppressed. Therefore, this matter is hereby remanded to the Auburn Municipal Court and the Lower Court is hereby ordered to suppress the pipe and the alleged marijuana.~~

_____ 4. The Lower Court did not err ~~erred~~ in denying the defense motion to dismiss regarding ~~when the City was not prepared to proceed~~ the Continuance on the date originally set for bench trial. ~~Therefore the finding of guilty is hereby set aside and this case is hereby remanded to the Auburn Municipal Court for dismissal.~~

DATED: 1/8/10

JUDGE

JUDGE MICHAEL J. TRICKEY

Presented by:

David R. Kirshenbaum WSBA 12706
Attorney for Defendant/Appellant Gauntt

Approved for Entry:

City Attorney for City of Auburn 8217

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Appendix F
Brief of Appellant, Gauntt, in *City of Auburn v. Dustin B. Gauntt*,
King County Superior Court Cause Number 09-1-05321-5 SEA, dated September 9, 2009.

RALJ Readi. Conf. 10/2/2009 @ 1:30 pm

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CITY OF AUBURN, Respondent, vs. DUSTIN GAUNTT, Appellant.	NO. 09-1-05321-5 SEA BRIEF OF APPELLANT

PROCEDURAL HISTORY OF CASE

On December 5, 2008, Dustin Gauntt was stopped by the Auburn Police and arrested for possession of marijuana and possession of drug paraphernalia. These charges were filed in the Auburn Municipal Court on December 8, 2008. On February 3, 2009, Mr. Gauntt waived his right to a jury trial and the matter was set for a March 27, 2009 bench trial.

Mr. Gauntt filed a motion to suppress and dismiss on March 13, 2009. This motion alleged that Mr. Gauntt's vehicle had been unlawfully stopped and that Mr. Gauntt's

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testimonial act of handing over a pipe he had been smoking from was the result of a non-Mirandized custodial interrogation.[1] The City filed its response on March 19, 2009. On March 27, 2009, the date set for the bench trial, the City moved to continue the case as the alleged marijuana had not been analyzed. Mr. Gauntt objected to the continuance, was prepared to go to trial, and moved to dismiss, citing CrRLJ 6.13(2) and arguing that since the report was not provided in a timely manner the results would have been inadmissible and the matter should be dismissed.[2] This defense motion was denied, the City's motion granted, and the matter was reset to April 24, 2009.

Mr. Gauntt, on April 24, 2008, orally moved to dismiss these charges as a result of the City's ordinance being preempted by RCW 69.50.425.[3] The City responded that it is not prosecuting Mr. Gauntt pursuant to the City Ordinance but proceeding under RCW

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[1] Where a police officer's questioning or requests induce a suspect to hand over or reveal the location of incriminating evidence, such nonverbal act may be testimonial in nature; the act should be suppressed if done while in custody in the absence of Miranda warnings. State v. Wethered, 110 Wn.2d 466, 471.

[2] (2) Exclusion of Test Reports. The court shall exclude test reports otherwise admissible under section (b) if:

(i) a copy of the certified report or certificate has not been delivered or mailed to the defendant or the defendant's lawyer at least 14 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(ii) in the case of an unrepresented defendant, a copy of this rule in addition to a copy of the certified report or certificate has not been delivered or mailed to the defendant at least 14 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or

(iii) at least 7 days prior to the trial date, or, upon a showing of cause, such lesser time as the court deems proper, the defendant has delivered or mailed a written demand upon the prosecuting authority to produce the expert witness at the trial.

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69.50.4014. The defense then responded by moving to dismiss both charges since the City had not adopted these statutes by reference and therefore was prosecuting Mr. Gauntt for crimes that were not part of the Auburn Municipal Code.[4] The City responded by stating RCW 39.34.180 confers upon the City of Auburn jurisdiction to enforce any gross misdemeanor or state misdemeanors.[5] The defense made further argument and the Court set the matter over for further briefing.[6] The Court also heard argument regarding defendant's motion to dismiss as a result of the unlawful stop and unlawful interrogation. Theses motions were denied. The recording equipment either did not pick up this motion hearing or the hearing was not recorded therefore there is no transcript of either the arguments made of the courts ruling.[7]

On May 1, 2009, Mr. Gauntt filed a brief in support of his motion to dismiss, the City responded on May 8, 2009. The defense filed an additional response on May 14, 2009. The Court, without oral argument, denied the defendant's request to dismiss ruling that RCW 39.34.180 is controlling. The defendant then stipulated to the police reports, a finding of guilty was entered and this appeal follows.

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[3] Report of Proceedings page 1 hereinafter referred to as ROP.

[4] Id.

[5] ROP page 4.

[6] ROP page 5-6.

[7] ROP page 8-9.

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FACTS OF CASE[8]

On December 5, 2008, Officer Byers was operating a marked police motorcycle. He was heading northbound on D ST NE and riding with Sgt. deChoudens. Officer Byers was stopped at the intersection of 4th ST NE waiting for a vehicle to clear the intersection so that they could enter 4th ST NE westbound when the officer saw Mr. Gauntt's vehicle approaching westbound on 4th ST NE. Officer Byers noticed, as the vehicle was approaching, that the driver had both hands near his mouth; and, as the vehicle got closer, the officer noticed that the driver was attempting to light a pipe using a lighter. Per the officer's report "the pipe appeared to be multicolored and appeared to shine and was being handled by the driver in a way that was consistent with that of people smoking controlled substances." The officer accelerated from the stop sign and stopped Mr. Gauntt's vehicle on 4th ST NE and Auburn Way North.

Officer Byers approached the driver and asked him what he had been lighting. The driver had a cigarette in his hand at the time of this initial contact. He told the officer that he had been lighting a cigarette. Officer Byers responded by telling Mr. Gauntt that he was lying. The officer then told Mr. Gauntt to hand him the pipe. The driver reached into his center console and produced a multicolored glass pipe.

The pipe allegedly had partially burnt green leafy material in the bowl. The appearance and smell of the substance was consistent with that of burnt marijuana per the officer's training and experience. Officer Byers then asked the driver for his license and insurance. The driver handed the officer his license but did not have insurance for the

[8] The facts were taken directly from Auburn Officer Byers report and make up the stipulated evidence in this case.

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vehicle. The driver was then asked to step from the vehicle and was placed under arrest for possession of marijuana and possession of drug paraphernalia. He was also cited for the infractions of negligent driving and no insurance.

ISSUES

1. Whether the City may enforce state law without having adopted the state law by reference or having adopted a compatible ordinance.

2. Whether the stop of defendant's vehicle was an unlawful pretext stop.

3. Whether the demanding that the defendant hand over his pipe, prior to Miranda rights being read, violated the defendant's constitutional right under the 5th Amendment of the United States Constitution, and Article 1 Section 9 of the Washington constitution.

4. Whether the Court erred in denying the defense motion to dismiss when the City was not prepared to proceed on the date originally set for the bench trial.

LAW AND ARGUMENT

ISSUE 1:

The City of Auburn has not adopted RCW 69.50.4014, RCW 69.50.412(1) or (2) and RCW 69.50.425. The City of Auburn, in the Auburn Municipal Court, argued that RCW 39.34.180 gave them unbridled authority to prosecute every criminal misdemeanor statute codified in the Revised Code of Washington even though the City Council had not adopted the RCW by reference.

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws. Wash. Const. Art. XI, § 11. In gleaning the meaning of Article X1 section 11 the maxim of expressio unius est exclusio alterius would seem to lead to the conclusion that cities may

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not enforce a law that they have not made or enacted.[9] It is undisputed that the City of Auburn did not prosecute Mr. Gauntt for any violation of law that the City of Auburn enacted. Therefore, they have not been granted the constitutional authority to prosecute Mr. Gauntt.[10]

RCW Title 3 Chapter 50 is the statutory authority for the creation of Municipal Courts. RCW 3.50.010 and RCW 3.50.020 which provide as follows[11]:

> RCW 3.50.010: Any city or town with a population of four hundred thousand or less may, by ordinance, provide for an inferior court to be known and designated as a municipal court, which shall be entitled "The Municipal Court of . . . . . (insert name of city or town)", hereinafter designated and referred to as "municipal court", which court shall have jurisdiction and shall exercise all powers by this chapter declared to be vested in the municipal court, together with such other powers and jurisdiction as are generally conferred upon such court in this state either by common law or by express statute.
>
> RCW 3.50.020 provides as follows:
>
> The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. A hosting jurisdiction shall have exclusive original criminal and other jurisdiction as described in this section for all matters filed by a contracting city. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution

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[9] See State ex rel. Banker v. Clausen, 142 Wash. 450, 454 (Wash. 1927)

[10] See Brown v. Cle Elum, 145 Wash. 588, 590 (Wash. 1927) where the court held that the Constitution did not authorize the legislature to allow cities to exercise municipal police powers outside of their boundaries.

[11] Arguably any statute that authorized the city to prosecute violations of laws that the city has not adopted would be in direct violation of Article XI section 11 of the Washington State Constitution. See Brown v. Cle Elum, 145 Wash. 588

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> thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

These statues clearly empower a city, operating a municipal court, to have exclusive, original jurisdiction of violations of city ordinances. There is nothing in these sections that give the City the authority to enforce laws they have not enacted. The only City that has been given the statutory authority to prosecute for violations other than violations of city ordinances that has such authority is the City of Seattle. See RCW 35.20.250 and City of Seattle v. Briggs, 109 Wn. App. 484.

Every statute and every word within a statute is there for a purpose and is to be given meaning. City of Spokane Valley v. Spokane County, 145 Wn. App. 825, 832 (Wash. Ct. App. 2008). No portion of a statute is to be rendered superfluous. Id. If this Court adopts the City's position in regard to RCW 39.34.180, it will in effect not only render many RCW provisions superfluous, but it will also render some of the City's own ordinances superfluous.

The City argued in the lower court, that RCW 39. 34.180 required them to prosecute all criminal law violations occurring within its jurisdiction regardless of whether it had enacted an ordinance. This is a complete misunderstanding of this statute. RCW 39.34.180 provides as follows:

> Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective

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> jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

RCW Title 39 is entitled Public Contracts and Indebtedness. Title 39 Chapter 34 is entitled Interlocal Cooperation Act. According to RCW 39.34.010, the purpose of the act is to allow interlocal agreements. RCW 39.34.180 stands for the proposition that if a city does not enact a criminal code and forces the county to step in and prosecute, then the city is "responsible" to reimburse the county.

Clearly, the purpose of this statute is to assure that cities are held financially responsible for the prosecution of criminal misdemeanors referred by their police forces, regardless of whether those charges are filed in municipal or state court. This provision is not intended to confer jurisdiction but to delineate monetary responsibility. RCW 39.34 et. seq. is, after all, the Interlocal Cooperation Act.

Furthermore, one cannot read RCW 39.34.180(1) in a vacuum and ignore the remaining four sections of this statute. State v. Ray, 23 Wn. App. 238, 240 (Wash. Ct. App. 1979). Section 2 of the statute sets out principles of negotiation as it relates to interlocal agreements. Section 3 discusses what happens if an agreement cannot be reached as compensation. Section 4 discusses the implications of terminating an interlocal agreement. Section 5 requires that a city without a criminal code must create one. If the City's position is deemed to be correct, then section 5 would be unnecessary.

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The City, in its brief submitted in the Municipal Court, argued that statutes are not to be rendered superfluous yet that is exactly what the outcome would be by ignoring RCW 39.34.180(5). If the City could simply allege a violation of state law in a complaint, without adopting an ordinance, then section 5 would be unnecessary. The defense position gives meaning to every word in the statute. A city meets the requirements of RCW 39.34.180 simply by entering into an interlocal agreement with the county in which the city is located or with one or more cities. See RCW 3.50.815[12].

RCW 3.50.815 clearly evinces that it was not the intent of the legislature to relieve the requirements of cities to adopt criminal laws that it wished to prosecute. See RCW 3.50.430 (All criminal prosecutions for the violation of a city ordinance shall be conducted in the name of the city and may be upon the complaint of any person).

The jurisdiction of the Auburn Municipal Court stems from RCW 3.50. ACC 2.14.020.[13] This makes the Municipal Court a court of limited jurisdiction. A court of

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[12] RCW 3.50.815 A city may meet the requirements of RCW 39.34.180 by entering into an interlocal agreement with the county in which the city is located or with one or more cities.

[13] A. The municipal court shall have jurisdiction and shall exercise all powers enumerated in this chapter and in Chapter 3.50 of the Revised Code of Washington, existing or amended at or after the effective date of the ordinance codified in this chapter, together with such other powers and jurisdiction as are generally conferred upon such court in the state of Washington either by common law or by express statute.

B. The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city. The municipal court shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. The municipal court shall also have the jurisdiction as conferred by state statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. ACC 2.14.020.

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limited jurisdiction is any court organized under RCW Titles 3, 35, or 35A.[14] RCW 35A.11.020 sets out the powers vested in legislative bodies of non-charter and charter code cities. In its relevant part to this discussion, it provides as follows:

> Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

If the State Legislature did not intend for municipalities to adopt their own criminal codes, the Legislature could have either just granted the cities concurrent jurisdiction as they did for cities over four hundred thousand, or as they did for the district courts. See RCW 35.20.250 and RCW 3.66.060. The fact that the Legislature did not do this clearly undermines the City's position that RCW 39.34.180 created the ability for the City to prosecute state statutes not adopted by the City. If the City's position is correct, then RCW 35A.11.200 would be unnecessary. See also RCW 3.50.800 and RCW 3.50.805 (these sections make it illegal to repeal in its entirety that portion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county under chapter 39.34 of the RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in

[14] 35A is the chapter that establishes the optional municipal code. This is the code that the City of Auburn operates under.

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district court as a result of the repeal). In other words, these statutes require the City to operate under its own municipal code.

The City, in its response to the Defendant's motion to dismiss, emphasized a portion of RCW 3.50.020 where the statute indicates that the municipal court may also have jurisdiction as conferred by statute. The City is misreading this legislation. The more reasonable interpretation of this statute is that the Legislature is referring to such things as issuing civil no contact orders or anti harassment orders[15]. See RCW 25.50 et. seq. and RCW 10.14 et. seq. Municipal Courts did not have the authority to deal with these cases until they were given the authority by statute. This interpretation gives every word in a statute meaning and renders none of the statutes superfluous. The City is not able to find a statute that specifically says that it can prosecute a person for conduct that has not been criminalized by its city code.

The Legislature is presumed to know the law. De Grief v. Seattle, 50 Wn.2d 1 (Wash. 1956). When it uses language in one statute and not in another it is presumed to

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[15]The courts defined in *RCW 26.50.010(3) have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection. RCW 26.50.020(5).
Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except the municipal court shall transfer such actions and proceedings to the superior court when it is shown that the respondent to the petition is under eighteen years of age. RCW 10.14.150(2).

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be done purposefully. State v. Roggenkamp, 153 Wn.2d 614 (Wash. 2005). Since Seattle and the district courts were the only governmental entities granted concurrent jurisdiction to enforce state statutes, it follows that no other entities were granted that authority. RCW 35.20.250 and RCW 3.66.060. Id. at 626.

The City's position is not consistent with its own municipal code. ACC 1.24.010 Penalties for Criminal Violations, provides as follows:

> A. Unless a specific penalty is expressly provided, for all violations of ordinances of the city which are identified as misdemeanors, upon conviction, such violations are punishable by imprisonment in the appropriate city or county jail for a period of up to 90 days and a fine of up to $1,000, or by both such fine and imprisonment.
>
> B. Unless a specific penalty is expressly provided, for all violations of ordinances of the city which are identified as gross misdemeanors, upon conviction, such violations are punishable by imprisonment in the appropriate city or county jail for a period of up to one year and a fine of up to $5,000, or by both such fine and imprisonment.
>
> C. Any violations of ordinances of the city that are identified as criminal violations, including being punishable by criminal penalties, but not identified as to whether they are misdemeanors or gross misdemeanors, shall be deemed misdemeanors or gross misdemeanors, as follows:
>
> 1. Criminal violations that are punishable by up to and including imprisonment in the appropriate city or county jail for a period of up to one year and a fine of up to $5,000, or by both such fine and imprisonment, shall be deemed gross misdemeanors; provided, that criminal violations that are punishable by not more than imprisonment in the appropriate city or county jail for a period of up to 90 days and a fine of up to $1,000, or by both such fine and imprisonment, shall be deemed misdemeanors;
>
> 2. Criminal violations that are adopted by reference from state statutes, or extrapolated with the same or substantially the same language from state statutes, shall be classified as misdemeanors or gross misdemeanors consistent with their classification by state statutes, and shall be punishable accordingly;
>
> 3. Criminal violations that are not identifiable as either misdemeanors or gross misdemeanors shall be deemed misdemeanors and shall be punishable accordingly.
>
> D. In addition, a defendant may be assessed court costs, jury fees and such other fees or costs as may be authorized in statute or court rules. In any court proceeding to enforce this section, the city shall have the

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> burden of proving by evidence beyond a reasonable doubt that a violation occurred. In a proceeding under this section a defendant shall be accorded each and every right protected under the Constitutions of the United States of America and the state of Washington, all applicable federal, state and local laws, and applicable court rules promulgated by the Washington Supreme Court and the inferior courts under the authority of the Washington Supreme Court.

It is clear from this ordinance that its authors understood that Auburn may properly only prosecute criminal violations of its ordinances or state statutes specifically adopted by reference. ACC 2.14.120 states that all criminal prosecutions for the violation of a city ordinance shall be conducted in the name of the city and may be upon the complaint of any person. The ordinance is silent as to what happens to a criminal prosecution not based on a city ordinance. The City's interpretation of RCW 39.34.180 renders its own ordinances superfluous.

ISSUES 2 AND 3:

Mr. Gauntt's vehicle was stopped when the officer saw Mr. Gauntt light a multicolored glass pipe. Officer Byers, upon stopping the vehicle and contacting Mr. Gauntt, immediately asked him what had he been lighting. When Mr. Gauntt responded that he was lighting a cigarette, Officer Byers accused him of lying and told Mr. Gauntt to hand over the pipe.

An unlawful pretext stop occurs when an officer stops a vehicle in order to conduct a speculative criminal investigation unrelated to the driving, and not for the purpose of enforcing the traffic code. State v. Montes-Malindas, 144 Wn. App. 254, 256. Pretextual traffic stops violate article I, section 7, of the Washington State Constitution because they are seizures absent the "authority of law" which a warrant would bring. State v. Ladson,

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138 Wn.2d 343, 358. With a few exceptions, warrantless searches and seizures are per se unreasonable and violate article I, section 7 of the Washington Constitution. State v. Montes-Malindas, 144 Wn. App. 254, 259. When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed. Id. at 359. The State bears the burden of showing a seizure without a warrant falls within one of these exceptions. State v. Kinzy, 141 Wn.2d 373, 384.

Officer Byers did not know what Mr. Gauntt was smoking. He decided he was going to make a traffic stop to find out what in fact Mr. Gauntt had in his pipe. The stop was not made as a result of traffic code enforcement. A vehicle cannot be stopped merely upon an officer's hunch. State v. O'Cain, 108 Wn. App. 542, 549. Article I, section 7 of our state constitution requires that an investigatory stop be based on articulable particularized facts that support a substantial possibility that a person is engaged in criminal activity. State v. Martinez, 135 Wn. App. 174, 177. A police officer must be able to "'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. State v. Martinez, 135 Wn. App. 174, 179-180. The facts must give rise to "'a substantial possibility that criminal conduct has occurred or is about to occur. Id. Innocuous facts do not justify a stop. Id. at 180. See also State v. Neth, 165 Wn.2d 177, 185. Mr. Gauntt was the victim of an unlawful pretext stop and all evidence derived there from must be suppressed.

The evidence in this case must be suppressed even if the stop was valid. Officer Byers, upon contacting Mr. Gauntt, immediately asked him what he had been lighting. Mr. Gaunt told him a cigarette, the officer basically called him a liar, and told him to hand him the pipe. Mr. Gauntt complied. While an officer may stop a person on the basis of a well-

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founded suspicion and request that the suspect identify himself and explain his activities, the officer cannot proceed with specific questions designed to elicit incriminating statements without being adjudged to have made a formal arrest. State v. Moreno, 21 Wn. App. 430, 434. Officer Byers' questioning went beyond a general request that the defendant explain his activity, Officer Byers' suspicions had focused on the defendant and his demand that the defendant hand him the pipe was designed to elicit incriminating testimonial evidence[16]. Id. This is precisely the situation to which the Miranda warnings are designed to apply. Id.

ISSUE 4:

CrRLJ 6.13 in its pertinent part provides as follows:

> (2) Exclusion of Test Reports. The court shall exclude test reports otherwise admissible under section (b) if:
>
> (i) a copy of the certified report or certificate has not been delivered or mailed to the defendant or the defendant's lawyer at least 14 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper.

It is undisputed that the City was not prepared to proceed to trial on March 27. [17] The City filed the charges against Mr. Gauntt prior to having the vegetable matter found on Mr. Gauntt forensically tested. They were present at the pretrial when the matter was set for bench trial and presumably knew what evidence that they had at their disposal as well as what evidence they would need to successfully prosecute Mr. Gauntt. In spite of the

---

[16] Where a police officer's questioning or requests induce a suspect to hand over or reveal the location of incriminating evidence, such nonverbal act may be testimonial in nature; the act should be suppressed if done while in custody in the absence of Miranda warnings. State v. Wethered, 110 Wn.2d 466, 471.

[17] ROP page 1.

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fact that they had from February 3rd to March 27th to prepare their case, they did not request a continuance until the day of trial. The court should have dismissed this case for want of prosecution. City of Bellevue v. Vigil, 66 Wn. App. 891, 892 (Wash. Ct. App. 1992).

CONCLUSION

This Court should reverse the defendant's conviction and remand this case back to the Municipal Court for dismissal since the City lacked authority to prosecute Mr. Gauntt for crimes that are not incorporated into the Auburn Municipal Code.

The seizure of Mr. Gauntt was based on speculation and was pretextual. All evidence derived from the stopping of Mr. Gauntt's vehicle should be suppressed. The ordering of Mr. Gauntt to hand over his pipe without being Mirandized coerced a testimonial act that should lead to suppression of the pipe and alleged marijuana that was discovered in the pipe.

Finally, the Court erred in denying defendant's motion to dismiss when the City of Auburn was not prepared to proceed with the bench trial on March 27, 2009. This matter should be remanded to the Municipal Court with instructions to set aside the findings of guilt entered and to dismiss these cases.

Respectfully submitted this 9th day of September, 2009.

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Attorney for Appellant Gauntt

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Appendix G
Brief of Respondent, City of Auburn, in *City of Auburn v. Dustin B. Gauntt*,
King County Superior Court Cause Number 09-1-05321-5 SEA, dated November 9, 2009.

The Honorable Michael Trickey
Hearing Date: January 8, 2010 at 8:30 a.m.

IN THE SUPERIOR COURT OF STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

CITY OF AUBURN, Plaintiff / Respondent, v. DUSTIN B. GAUNTT, Defendant / Appellant.	NO. 09-1-05321-5 SEA BRIEF OF RESPONDENT, CITY OF AUBURN

COMES NOW the Respondent, City of Auburn, hereinafter referred to as the Plaintiff, by and through its attorney, Daniel B. Heid, and in response to the appeal of the Appellant, Dustin B. Gauntt, hereinafter referred to as the Defendant, respectfully submits the following:

STATEMENT OF FACTS

The Defendant was charged in the Auburn Municipal Court, under its Cause Number C99329, with the crimes of Possession of 40 Grams or Less of Marijuana and Unlawful Use of Drug Paraphernalia. While the charges were pending before the Municipal Court, the Defendant brought several motions that were decided contrary to the Defendant. Thereafter, the Defendant chose not to take the matter to trial, instead submitted the charges to the Municipal Court pursuant to a Statement of Defendant on Submittal or Stipulation to Facts,

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whereby the police report was to be read by the judge, and based on the evidence therein and other material presented, the judge would decide if the Defendant was guilty of the crimes charged. The police reports, as submitted to the Municipal Court in connection with the Statement of Defendant on Submittal or Stipulation to Facts, indicated the following facts:

> On December 5, 2008, at approximately 4:22 p.m., Officer T. Byers and Sergeant de Choudens of the Auburns Police Department were traveling northbound on D Street NE, within the City of Auburn Washington, and operating marked Police motorcycles. The officers were stopped at the intersection with 4th Street NE and waiting for a vehicle to clear the intersection so that they could enter 4th Street NE westbound.
>
> The police officers saw a vehicle with Washington License Number 498-WQL approaching westbound on 4th Street NE. As the vehicle neared the intersection they saw that the driver had both hands near his mouth. As the vehicle got closer, they could see that the driver was attempting to light a pipe using a lighter.
>
> They could see that the pipe was multi-colored and appeared to shine and was being handled by the driver in a way that was consistent with that of people smoking controlled substances. This observation/assessment was based upon the officers' training and experience.
>
> The police officers accelerated from the stop sign and stopped the vehicle on 4th Street NE at the intersection with Auburn Way North. They approached driver and asked him what he had been lighting. The driver had a cigarette in his hand at the time of the officers' initial contact. He told them that he had been lighting a cigarette. The police told the driver that they he was lying and told him to hand the pipe over to them. The driver then reached into the center console of the vehicle and produced a multi-colored glass pipe. The pipe had partially burnt green leafy material in the bowl. The appearance and the smell of the substance were consistent with that of burnt marijuana based upon the officers' training and experience.
>
> The police asked the driver for his license and insurance, and he handed them a Washington license that identified him as Gauntt, Dustin B., DOB 09/09/84, the Defendant herein. Upon the officers' returned to the Police Station, the material left in the bowl of the pipe was tested using the NIK test kit E, (Duquenois Levine), using the protocols established by the WSPCL, and field tested the substance with positive results for the presence of Marijuana. The weight of the suspected marijuana was .1 gram, and the total package weight of the evidence envelope was 21.3 grams. This was verified by the Washington State Patrol (WSP) Crime Lab Report - stating that material in pipe and in plastic bag was analyzed and confirmed as marijuana.

The Defendant was thereafter charged in the Auburn Municipal Court, under Cause Number C99329, with the crime of Possession of 40 Grams or Less of Marijuana, a misdemeanor, contrary to Section 69.50.4014 of the Revised Code of Washington (RCW)

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[Count One] and the crime of Unlawful Use of Drug Paraphernalia, a misdemeanor, contrary to RCW 69.50.412 [Count Two]. To put matters more fully into a time-line perspective, the procedural facts of the case include the following:

12 08 2008 THE ABOVE REFERENCED CASE WAS FILED WITH THE AUBURN MUNICIPAL COURT.

12 10 2008 AMENDED COMPLAINTS WERE FILED WITH THE MUNICIPAL COURT.

01 07 2009 CITY PROSECUTORS RECEIVED THE NOTICE OF APPEARANCE FROM DEFENSE ATTORNEY KIRSHENBAUM.

01 08 2009 DISCOVERY [INCLUDING COPIES OF THE AMENDED COMPLAINT, POLICE REPORTS AND CITY PROSECUTORS' INITIAL OFFER SHEET] WAS SENT TO ATTORNEY KIRSHENBAUM.

01 12 2009 CONFIRMATION OF THE RECEIPT OF DISCOVERY BY ATTORNEY KIRSHENBAUM WAS RECEIVED BY THE CITY PROSECUTORS.

02 03 2009 THE DEFENDANT APPEARED IN THE AUBURN MUNICIPAL COURT, BEFORE JUDGE PRO TEM TOYAHORA WITH COUNSEL KIRSHENBAUM. CITY PROSECUTOR ALESSI WAS PRESENT ON BEHALF OF THE CITY. A WAIVER OF JURY TRIAL WAS FILED BY THE DEFENDANT, AND THE DEFENDANT WAIVED SPEEDY TRIAL TO 05/06/2009. A NON-JURY TRIAL WAS SET FOR 03 27 2009, AT 08:30 AM IN COURTROOM 1 WITH JUDGE PATRICK R. BURNS.

03 27 2009 THE DEFENDANT APPEARED WITH COUNSEL KIRSHENBAUM BEFORE JUDGE BURNS. THE CITY WAS REPRESENTED BY CITY PROSECUTOR ALESSI. THE CITY ADVISED THE MUNICIPAL COURT THAT THE WASHINGTON STATE CRIME LAB HAS NOT YET PROCESSED THE CITY'S EVIDENCE REQUEST FOR THE TRIAL. THE CITY MOVED THE COURT FOR A CONTINUANCE OF THE TRIAL.

03 27 2009 THE CITY'S MOTION FOR A CONTINUANCE IS GRANTED. NON-JURY TRIAL SET FOR 04 24 2009, AT 08:30 AM IN COURTROOM 1 WITH JUDGE PATRICK R. BURNS.

03 27 2009 (LATER THAT SAME DAY) THE WASHINGTON STATE PATROL (WSP) CRIME LAB REPORT - STATING THAT THE MATERIAL IN THE PIPE AND IN THE PLASTIC BAG WAS ANALYZED AND CONFIRMED TO BE MARIJUANA - WAS RECEIVED BY THE CITY PROSECUTORS AT NOON (AFTER THE MORNING COURT CALENDAR IN WHICH THE TRIAL WAS CONTINUED.

04 01 2009 THE SUPPLEMENTAL DISCOVERY (THE WSP CRIME LAB REPORT) WAS SENT TO ATTORNEY KIRSHENBAUM.

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04 24 2009	THE DEFENDANT APPEARED IN COURT BEFORE JUDGE PRO TEM STEAD ALONG WITH COUNSEL KIRSHENBAUM. CITY PROSECUTOR ALESSI WAS PRESENT ON BEHALF OF THE CITY. THE DEFENSE FILED A MOTION TO DISMISS, ARGUING THAT CITY HAS NOT ADOPTED THE RCW INTO ORDINANCE. THE COURT TOOK THE MOTION UNDER ADVISEMENT AND ADVISED THAT IT EXPECTED BRIEFS FILLED WITHIN TWO WEEKS.
04 24 2009	THE DEFENSE FILED ADDITIONAL MOTIONS TO DISMISS AND SUPPRESS ALL EVIDENCE. CITY PROSECUTOR ALESSI RESPONDED ON BEHALF OF THE CITY. ATTORNEY KIRSHENBAUM RESPONDED TO THE CITY'S ARGUMENTS. DEFENSE MOTIONS WERE DENIED BY JUDGE PRO TEM STEAD – CITING THE FACT THAT THE OFFICER STATED THAT HE SAW THE GLASS PIPE AND IN HIS TRAINING AND EXPERIENCE, IT IS USED TO SMOKE MARIJUANA.
04 24 2009	THE DEFENSE REQUESTS A CONTINUANCE OF THE BENCH TRIAL UNTIL AFTER PENDING MOTIONS ARE DECIDED. THE REQUEST FOR THE CONTINUANCE WAS AGREED TO BY CITY AND GRANTED BY COURT.
04 28 2009	A NON-JURY TRIAL SET FOR 06 08 2009, AT 01:00 PM IN COURTROOM 1 WITH JUDGE PATRICK R. BURNS.
06 08 2009	THE DEFENDANT APPEARED IN COURT WITH COUNSEL, KIRSHENBAUM. THE CITY WAS REPRESENTED BY CITY PROSECUTOR BOESCHE BEFORE JUDGE PRO TEM STEAD. THE DEFENDANT STIPULATED TO FACTS SUFFICIENT/ SUBMITTED A STATEMENT OF DEFENDANT ON SUBMITTAL OR STIPULATION TO FACTS, UPON WHICH THE MUNICIPAL COURT ENTERED FINDINGS OF GUILTY.

Following the Statement of Defendant on Submittal or Stipulation to Facts, submitted on June 8, 2009, and the reading of the police report by the Municipal Court judge, the Defendant was found guilty of both charges, and sentenced on the same date – June 8, 2009. The Defendant thereafter appealed the matter to this Court.

ISSUES ON APPEAL

The Defendant has raised a number of issues in connection with this appeal to the Superior Court, including the following:

1. Whether the Plaintiff may enforce state law without having adopted the state law by reference or having adopted a compatible ordinance.

2. Whether the stop of the Defendant s vehicle was an unlawful pretext stop.

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3. Whether the Court erred in denying the defense motion to dismiss when the Plaintiff was not prepared to proceed on the date originally set for the bench trial.

4. Whether the Police telling the Defendant to hand over his pipe, prior to *Miranda* rights[1] being read, violated the Defendant's constitutional right under the 5th Amendment of the United States Constitution, and Article 1, Section 9 of the Washington State Constitution.

ARGUMENT

APPELLATE REVIEW

The factual evidence that supports the convictions in this case includes the description of facts and activity set forth in the police report and test reports submitted to the Municipal Court via the Statement of Defendant on Submittal or Stipulation to Facts. With respect to the evidence which has been presented to the trial court, it is appropriate for this Court to recognize and apply the standard set forth in *State v. Bingham*, 105 Wn. 2d 820, 719 P. 2d 109 (1986), as follows:

> The constitutional standard for reviewing the sufficiency of a criminal trial is "whether after reviewing the evidence in the light most favorable to the Prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 61 L.Ed. 2d 560, 99 S.Ct. 2781 (1979); *State v. Green*, 94 Wn. 2d 216, 616 P.2d 268 (1980). (Emphasis the Court's).

Here, again, viewing the evidence in light most favorable to the plaintiff, there certainly are facts which would allow a rational trier of fact to find the element of the crime beyond a reasonable doubt. Additionally, where the Superior Court is acting as an appellate court, it shall accept those factual determinations supported by substantial evidence in the record which were expressly made by the court of limited jurisdiction or which may reasonably have

[1] Per *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed 2d 694, 87 S.Ct 1602, 10 A.L.R. 3rd 974 (1966).

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been inferred from the judgment of the court of limited jurisdiction. *State v. Basson*, 105 Wn. 2d 314, 714 P. 2d 1188 (1986).

STATUTORY LANGUAGE

The statutory language of the two criminal offences with which the Defendant was charged and convicted (Possession of 40 Grams or Less of Marijuana, RCW 69.50.4014 and Unlawful Use of Drug Paraphernalia, RCW 69.50.412) states as follows:

> 69.50.4014 Possession of forty grams or less of marihuana -- Penalty.
> Except as provided in RCW 69.50.401(2)(c), any person found guilty of possession of forty grams or less of marihuana is guilty of a misdemeanor. [2003 c 53 § 335.]

> 69.50.412 Prohibited acts: E -- Penalties. (Drug Paraphernalia)
> (1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.
> (2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.
> (3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.
> (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.
> (5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases. [2002 c 213 § 1; 1981 c 48 § 2.]

There is no dispute that the facts of this case are sufficient to meet the evidentiary requirements for conviction; certainly no argument has been presented, other than the

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Defendant's argument that certain evidence should have been excluded or that certain motions should have been decided differently.

PLAINTIFF'S AUTHORITY TO PROSECUTE VIOLATIONS

Contrary to the Defendant's argument, the Plaintiff has statutory authority to prosecute the violations charged in this case. Even where the City of Auburn had not adopted Ordinances incorporating Sections 69.50.412 or 69.50.4014 RCW, the City of Auburn would still have jurisdiction and responsibility to prosecute misdemeanor and gross misdemeanor violations of State Statutes, including RCW 69.50.412 and 69.50.4014 occurring within its jurisdiction and referred from its law enforcement agency. That authority and responsibility comes from RCW 39.34.180, which reads as follows:

> 39.34.180 Criminal justice responsibilities--Interlocal agreements.
>
> (1) *Each county, city, and town is responsible for the prosecution*, adjudication, sentencing, and incarceration *of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance*, and must carry out these responsibilities through the *use of their own courts*, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.
>
> (2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.
>
> (3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.
>
> (4) For cities or towns that have not adopted, in whole or in part, criminal code or

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ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998. [2001 c 68 § 4; 1996 c 308 § 1.] (Emphasis added.)

This statute carries a very strong mandate. Every city, including Auburn, is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, regardless of *whether filed under state law or city ordinance*. Arguably, that statute makes unnecessary or relieves cities from even enacting criminal codes as the jurisdiction and responsibility is conveyed without the need of adopting any ordinance. That jurisdiction and responsibility is not incompatible with the authority of municipal courts either. The language of RCW 39.34.180 which indicates that *cities "must" carry out these responsibilities through the use of their own courts, staff, and facilities*, is compatible with the language of RCW 3.50.020, which deals with the jurisdiction of municipal courts, as the statute speaks to jurisdiction in terms of that which is conferred by statute. RCW 3.50.020 provides as follows:

3.50.020 Jurisdiction.

The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city in which the municipal court is located and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. *The municipal court shall also have the jurisdiction as conferred by statute.* The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. (Emphasis added.)

RCW 39.34.180 certainly conferred that jurisdiction, in that it demands that cities ***must carry out these responsibilities*** through the ***use of their own courts, staff, and facilities***. According to this statute, regardless of whether the City had its own criminal code,

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or whether it adopted a criminal code by adopting State Statutes by reference, or whether it has a criminal code at all, and regardless of whether the City has its own Municipal Court or files its cases in the District Court, the City has the authority to prosecute violations of the marijuana and paraphernalia crimes, and it, in fact, has the responsibility for prosecuting such violations as long as the offenses occurred within its corporate boundaries and its own law enforcement agency initiated the investigation.

Ironically, the Defendant seems to argue that this authority deals only with the responsibility to pay the County for prosecuting these offenses. In fact, such a conclusion would make no sense in light of the language calling for use of the city's own court, staff and facilities. Rather, the requirement to contract with and pay the county anything only comes into play if a city does not prosecute such offenses - regardless of whether filed under state law or city ordinance - through the use of its own courts, staff, and facilities.[2]

Similarly argued by the Defendant, Plaintiff notes that *no word of a statute should be deemed superfluous, void or insignificant*. In attempting to give effect to the intent of the legislature, an act must be construed as a whole, harmonizing all provisions to ensure proper construction. *Homestreet, Inc. v. State, Dept. of Revenue*, *supra*; *In re Piercy*, 101 Wn.2d 490, 681 P.2d 223 (1984); *Kasper v. City of Edmonds*, 69 Wn.2d 799, 804, 420 P.2d 346 (1966) (*quoting Groves v. Meyers*, 35 Wn.2d 403, 407, 213 P.2d 483 (1950)). *See also Powell v. Viking Insurance Company*, 44 Wn. App. 495, 722 P. 2d 1343 (1986). However, the construction argued by the Defendant would leave the language stating that cities *must*

[2] RCW 39.34.180 states that cities are responsible for prosecuting the criminal violations referred by its police whether charged under city ordinance or state law – and must use of its own court, staff and facilities *or* by entering into contracts or interlocal agreements under this chapter to provide these service.

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carry out these responsibilities through the use of their own courts, staff, and facilities as completely meaningless, void and superfluous.[3]

PRETEXT STOP

The Defendant argues that the police stop of his vehicle was a pretext stop. In *State v. Ladson*, 138 Wn.2d 343, 979 P.2d 833 (1999), the court defined - described a pretextual stop the police pulling over a citizen as a ruse, unsupported by a reasonable articulable suspicion of criminal activity, not to enforce the law, but to conduct a criminal investigation. In such a case, the reasonable articulable suspicion that a violation has occurred which justifies an exception to the warrant requirement for an ordinary stop would not justify a stop for criminal investigation.

"[A] stop, although less intrusive than an arrest, is nevertheless a seizure and therefore must be reasonable under the Fourth Amendment and article 1, section 7 of the Washington Constitution." *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986). "If the initial stop was unlawful, the subsequent search and fruits of that search are inadmissible." *Kennedy*, 107 Wn.2d at 4 (citing *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)). Police violate neither the Fourth Amendment nor article 1, section 7 by conducting a brief "*Terry* "[4] investigatory stop if they have "a reasonable and articulable suspicion that the

[3] The Defendant's argument regarding *preemption* [Page 2, Brief of Defendant] is also misplaced, in that preemption occurs when the Legislature states its intention either expressly or by necessary implication to preempt the field. *State v. Kirwin*, 165 Wn.2d 818, 203 P.3d 1044 (2009). Here, RCW 69.50.608 provides that (with respect to controlled substances) the state of Washington only preempts the setting of penalties for violations of the controlled substances act. The crimes involved herein are non-felonies, punishable, consistent with state law [including RCW 69.50.425], within city prosecution jurisdiction. With that, RCW 39.34.180 states, consistent with city non-felony responsibility, that "[n]othing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense."

[4] *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

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individual [stopped] is involved in criminal activity." *State v. Walker*, 66 Wn. App. 622, 626, 834 P.2d 41 (1992). A reasonable suspicion is the "substantial possibility that criminal conduct has occurred or is about to occur." *Kennedy*, 107 Wn.2d at 6.

As noted by the court in *State v. Marcum*, 149 Wn. App. 894, 907-08, 205 P.3d 969 (2009), citing *United States v. Arvizu*, 534 U.S. 266, 274, 277, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002), the court's "determination that reasonable suspicion exists ... need not rule out the possibility of innocent conduct." See also Kennedy, 107 Wash.2d at 6, 726 P.2d 445 (explaining that activity consistent with both criminal and noncriminal activity may justify a brief detention). Rather, "the determination of reasonable suspicion must be based on commonsense judgment and inferences about human behavior." *Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). "In allowing [investigative] detentions, *Terry* accepts the risk that officers may stop innocent people." Wardlow, 528 U.S. at 126, 120 S.Ct. 673.

However, as noted by the court in *State v. Marcum*, 149 Wn. App. at 908, the language in *Arvizu* is, if anything, even more cognizant than is *Kennedy* of the idea that trained police observers may form reasonable suspicion based on circumstances that ordinary observers would not necessarily construe as potentially criminal. That is, an officer may "draw on [his or her] own experience and specialized training to make inferences from and deductions about cumulative information available to them that 'might well elude an untrained person.'" *Arvizu*, 534 U.S. at 273 (quoting *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)). In this regard, Washington State Constitution Article I, Section 7

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jurisprudence is parallel to Fourth Amendment jurisprudence in the *Terry* stop context. *Marcum*, 149 Wn. App. at 908.

However, in this case, the police actually saw the Defendant smoking what they knew from their training and experience to be a marijuana pipe.

The court in *State v. Anderson*, 51 Wn. App. 775, 755 P.2d 191 (1988), held that an officer having an articulable suspicion of a violation of the law is not required to eliminate all possibilities of innocent behavior before making a stop of a suspect. Additionally, the determination of the validity of the stop of the Defendant is not dependent on the outcome of the contested hearing. In *State v. Mitchell*, 80 Wn. App. 143, 147, 906 P.2d 1013 (1995), the court addressed the standard for an investigatory stop, stating "the existence of a reasonable suspicion does not depend on the officer's subjective beliefs, but is determined based on an objective standard," citing *Scott v. United States*, 436 U.S. 128, 137 38, 98 S.Ct. 1717, 1723, 56 L.Ed.2d 168 (1978); and *State v. Barber*, 118 Wn.2d 335, 349, 823 P.2d 1068 (1992). The United States Supreme Court has indicated that an investigatory stop can only be justified if there is some objective manifestation that the person stopped is, or is about to be, engaged in some illegal activity. *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981). Here, the objective manifestation was the fact that the police saw the Defendant smoking what they knew to be a marijuana pipe.

In this case, the police saw the Defendant smoking what they recognized to be, and what was in fact, a marijuana pipe. Pursuant to RCW 10.31.100, a police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor when the offense is committed in the presence of the officer. That is the case here.

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Moreover, in determining whether probable cause to arrest exists, the court must consider "the totality of the facts and circumstances within the officer's knowledge at the time of the stop. The standard of reasonableness to be applied takes into consideration the special experience and expertise of the arresting officer." *State v. Fore*, 56 Wn. App. 339, 343, 783 P.2d 626 (1989), quoting *State v. Flicks*, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979), review denied, 114 Wn.2d 1011, 790 P.2d 168 (1990). Similarly, in *State v. White*, 40 Wn. App. 490, 699 P. 2d 239 (1985), the court indicated that in determining whether there is authority for a stop or an arrest, the justification for the stop or arrest will be made in light of all of the reasonable, trustworthy information known to the officer or other individual investigating the offense.

The Defendant cites *State v. O'Cain*, 108 Wn. App. 542, 31 P.3d 733 (2001) for the proposition that "a hunch does not rise to the level of a reasonable, articulable suspicion necessary for a warrantless investigatory stop." *O'Cain*, 108 Wn. App. at 549. But here, different than in *O'Cain*,[5] the police officers did see a driver – the Defendant – smoking what, in their training and experience, they knew to be a marijuana pipe. What they saw was clearly more than an *O'Cain* type hunch.

There was no pretext stop. There was, instead, a legitimate, reasonable and articulable suspicion that the Defendant was involved in criminal activity.

[5] In *O'Cain*, the police saw no hand motions suggesting an exchange of product or money, although the police had a hunch that a narcotics transaction had taken place, based on the neighborhood. *Id.* 549.

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MIRANDA RIGHTS[6]

Contrary to the argument that the Defendant makes, *Miranda* warnings are not required for a questioning during a *Terry* stop unless the stop expands into custodial questioning. In *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984), the court held that a traffic stop does not trigger the need for Miranda warnings. In *Berkemer*, the United State Supreme Court held that a brief Fourth Amendment seizure of a suspect, either in the context of a routine, on-the-street *Terry* stop or a comparable traffic stop, does not rise to the level of "custody" for the purposes of *Miranda. Berkemer v. McCarty*, 468 U.S. at 439-40. Because a routine traffic stop curtails the freedom of a motorist such that a reasonable person would not feel free to leave the scene, a routine traffic stop, like a *Terry* stop, is a seizure for the purposes of the Fourth Amendment. *Berkemer* at 436-37. However, the Court recognized that because both traffic stops *and* routine *Terry* stops are brief, and they occur in public, they are substantially less "police dominated" than the police interrogations contemplated by *Miranda. Id.* at 439. Thus, a detaining officer may ask a moderate number of questions during a *Terry* stop to determine the identity of the suspect and to confirm or dispel the officer's suspicions without rendering the suspect "in custody" for the purposes of *Miranda. Id.* at 439-40. Thus the *Berkemer* Court determined that Miranda warnings are not required to question an individual during a *Terry* stop *Id.* at 441-42.

Washington courts have adopted the ruling in *Berkemer*. *See State v. Short*, 113 Wn.2d 35, 40, 775 P.2d 458 (1988). Washington courts have also agreed that a routine *Terry* stop is not custodial for the purposes of *Miranda. See State v. Hilliard*, 89 Wn.2d 430, 432, 435-36,

[6] *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed 2d 694, 87 S.Ct 1602, 10 A.L.R. 3rd 974 (1966).

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573 P.2d 22 (1977) (holding that suspect was not subject to custodial interrogation despite the fact that he would not have been allowed to leave until he answered questions). *See also State v. Heritage*, 152 Wn.2d 210, 218, 95 P.3d 345 (2004).

In the *Heritage* case, after determining that park security officers *were* state actors for purposes of *Miranda* warnings, the Court, nevertheless, ruled that the state actors' questions of a group of subjects seen sharing a suspected marijuana pipe did not require *Miranda* warnings. The state actors asked one member of the group if the pipe was his, which he responded it was not. The state actors then asked the entire group who the pipe belonged to. Ms. Heritage responded that it was her pipe. *Id.* at 212-13. As stated in *Berkemer*, *supra*, during a *Terry* stop, an officer may ask a moderate number of questions to determine the identity of the suspect and to confirm or dispel the officer's suspicions without rendering the suspect "in custody" for the purposes of *Miranda*. *Berkemer* 468 U.S. at 439-40. The Court ruled that at the time the state actors asked to whom the marijuana pipe belonged, they were in the midst of asking a moderate number of questions related to their suspicion that member(s) of the group were smoking marijuana. A reasonable person in Ms. Heritage's position would not have believed his or her freedom was curtailed to a degree analogous to arrest. The encounter was analogous to a *Terry* stop, not custodial interrogation, at the time Ms. Heritage admitted to ownership of the pipe. *Heritage*, 152 Wn.2d at 219.

Similar to the state actors in *Heritage*, Auburn Police Officer Byers asked two precise questions to confirm or dispel his belief that the Defendant was in possession of drug paraphernalia. The first question asked what the Defendant had been lighting. The second question related to the location of the pipe. It cannot be disputed that two questions are a

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"moderate number" of questions. Nor can it be disputed that both of these questions were directly related to Officer Byers' suspicions of the Defendant's criminal activity. Officer Byers' questions of the Defendant were in the context of a *Terry* stop and therefore not "custodial" for purposes of requiring *Miranda* warnings. Additionally, Officer Byers' questions were solely directed towards confirming or dispelling his suspicion that the Defendant was engaged in a specific criminal activity; *i.e.*, possession of drug paraphernalia.

The Defendant has cited only one case, *State v. Moreno*, 21 Wn. App 430, 585 P.2d 481 (1978), in support of his argument that the questioning of the Defendant required *Miranda* warnings. That case is factually distinguishable and should have no precedential value in deciding the case before this Court. The facts of the *Moreno* case unfolded in the Spokane airport on June 3, 1977, when police officers, upon an anonymous tip that Carlos Moreno was traveling with three ounces of cocaine, stopped Mr. Moreno at the departure deck of the airport and escorted him with light touch or forcibly (depending on whose version of events you believe) to the airport security office. At the airport security office, two officers took Mr. Moreno into a five foot by ten foot room. Mr. Moreno was sat down with one officer standing in front of him and another standing in front of the door. The officers then asked Mr. Moreno if he had something he should not and asked if he had "snorting stuff." In response Mr. Moreno produced three baggies of cocaine, at which point he was arrested and then read his *Miranda* warnings. *Id.* at 431-32. The Court ruled that "the interrogation occurred in a custodial setting and the specific questioning went beyond the scope of questioning authorized for an investigative stop." *Id.* at 435.

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The facts of the case before this court are radically different. The Defendant was stopped in a motor vehicle, which he remained in during all questioning, there was no physical contact between the Defendant and the Officer, nor was the Defendant removed to a "custodial setting" for questioning. Clearly, the questioning of the Defendant by Officer Byers was not custodial. As such, there was no requirement to provide *Miranda* warnings to the Defendant prior to the asking of those two questions.

CrRLJ 6.13(b)(2)

Finally, the Defendant argues that the Municipal Court erred in not dismissing the case per Rule 6.13(b)(2) of the Criminal Rules of Courts of Limited Jurisdiction (CrRLJ) – or alternatively more accurately, granting the trial continuance. CrRLJ 6.13(b)(2) states in pertinent part as follows:

> CrRLJ 6.13(b)(2) - Exclusion of Test Reports. The court shall exclude test reports otherwise admissible under section (b) if:
>
> (i) a copy of the certified report or certificate has not been delivered or mailed to the defendant or the defendant's lawyer at least 14 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or
>
> (ii) in the case of an unrepresented defendant, a copy of this rule in addition to a copy of the certified report or certificate has not been delivered or mailed to the defendant at least 14 days prior to the trial date or, upon a showing of cause, such lesser time as the court deems proper, or
>
> (iii) at least 7 days prior to the trial date, or, upon a showing of cause, such lesser time as the court deems proper, the defendant has delivered or mailed a written demand upon the prosecuting authority to produce the expert witness at the trial.

However, as noted above, there was no denial of reports by the City Prosecutors. Rather, the City had not yet received its requested test results. Moreover, once received, they were promptly provided to defense counsel. But more importantly, the trial court's rulings on continuances fall within the broad discretion of the trial court. A trial court's grant or denial of a motion for continuance by either party will not be disturbed absent a showing of

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manifest abuse of discretion. *State v. Downing*, 151 Wn.2d 265, 272-73, 87 P.3d 1169 (2004).[7]

An abuse of discretion exists when a trial court's exercise of its discretion is manifestly unreasonable or based upon untenable grounds or untenable reasons. *State v. Neal*, 144 Wn.2d 600, 609, 30 P.3d 1255 (2001); *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997). *See also State v. Zunker*, 112 Wn. App. 130, 140, 48 P.3d 344 (2002); *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Stated differently, a trial court abuses its discretion when it adopts a view no reasonable person would take. *State v. Castellanos*, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997). It cannot reasonably be said, particularly in light of the undisputed evidence that the Plaintiff had requested but had not yet received its WSP test results that granting a continuance was an abuse of discretion – something that no reasonable person would do, especially since at that point in time, speedy trial time had not yet run.

CONCLUSION

For all of the reasons set forth herein above, the Plaintiff respectfully requests that the Defendant's appeal be denied.

Respectfully submitted this 9th day of November, 2009.

Daniel B. Heid, WSBA #8217
Attorney for City of Auburn, Plaintiff

[7] Similarly, in that CrRLJ 6.13(b)(2) speaks to allowing or excluding evidence, it should be noted that the trial judge's decision to admit or exclude testimony is within his/her reasonable discretion. *State v. Redmond*, 150 Wn.2d 489, 78 P.3d 1001 (2003). However, the actual issue was the granting of the Plaintiff's continuance request when it had not yet received the WSP test results.

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Appendix H
Motion to Dismiss by Defendant, Gauntt, in *City of Auburn v. Dustin B. Gauntt*, Auburn Municipal Court Cause Numbers C99329/I83470, dated April 30, 2009.

AUBURN MUNICIPAL COURT, KING COUNTY, WASHINGTON

CITY OF AUBURN, Plaintiff, vs. DUSTIN B. GAUNTT, Defendant.	NO. C99329 / I83470 MOTION TO DISMISS

COMES NOW the defendant, Dustin Gauntt, by and through his attorney, David R. Kirshenbaum and moves this Court to dismiss these matters. These motions are based on the files and records herein and the memorandum attached hereto.

ISSUES PRESENTED

1. Whether the city may enforce state law without having adopted the state law by reference or having adopted a compatible ordinance.

FACTS

Mr. Gauntt is currently charged by complaint with violating RCW 69.50.412(1), possession of drug paraphernalia and RCW 69.50.4014, possession of marijuana. Neither of theses state statutes have been adopted by reference in the Auburn Municipal Code. See RCW 35A.12.140, RCW 35.21.180.

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LEGAL AUTHORITY AND ARGUMENT

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws. Wash. Const. Art. XI, § 11.

A first-class city is a city with a population of ten thousand or more at the time of its organization or reorganization that has a charter adopted under Article XI, section 10, of the state Constitution. RCW 35.01.010. The City of Auburn is a first class city. Cities of the first class shall be organized and governed according to the law providing for the government of cities having a population of ten thousand or more inhabitants that have adopted a charter in accordance with Article XI, section 10 of the state Constitution. RCW 35.22.010.

Among the many powers granted to first class cities, the one applicable to the case at bar is as follows:

> To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with **violating any of the ordinances**[1] of said city. The punishment shall not exceed a fine of five thousand dollars or imprisonment in the city jail for one year, or both such fine and imprisonment. The punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation. RCW 35.22.280(35).

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[1] Emphasis added

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Any city or town with a population of four hundred thousand or less may, by ordinance, provide for an inferior court to be known and designated as a municipal court, which shall be entitled "The Municipal Court of . . . . . (insert name of city or town)", hereinafter designated and referred to as "municipal court", which court shall have jurisdiction and shall exercise all powers by this chapter declared to be vested in the municipal court, together with such other powers and jurisdiction as are generally conferred upon such court in this state either by common law or by express statute. RCW 3.50.010.

RCW 3.50.020 provides as follows:

> The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. A hosting jurisdiction shall have exclusive original criminal and other jurisdiction as described in this section for all matters filed by a contracting city. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

All criminal prosecutions for the violation of a city ordinance shall be conducted in the name of the city and may be upon the complaint of any person. RCW 3.50.430.

There is no statute that confers upon a first class city the authority to prosecute for violations other than violations of city ordinances. The only city that has such authority is the City of Seattle. See RCW 35.20.250 and City of Seattle v. Briggs, 109 Wn. App. 484.

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I anticipate that the city is going to rely on RCW 39.34.180 as the authority for them to prosecute crimes that are not contained within their city code. See ACC 9.02.020.[2] This reliance is clearly misplaced. See City of Medina v. Primm, 160 Wn.2d 268. In Primm the authority to charge of state violation of Driving Under the Influence was challenged, the court in finding that the prosecution was appropriate noted the City of Medina had adopted the RCW by reference. Id at 281.

Furthermore, there is nothing under Chapter 39.34 that states that cities do not need to adopt ordinances that they desire to enforce. RCW 39.34.010 provides that it is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. RCW 39.34.180(1) states as follows:

> Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of

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[2] **9.02.020 City criminal jurisdiction.**
Any person who commits within the corporate limits of the city any crime that is a violation hereof, in whole or in part, or a violation the prosecution of which is the responsibility of the city pursuant to RCW 39.34.180, is liable to arrest and punishment.

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> felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

"Responsible" as used in chapter 39 means financially responsible. Primm at 274. Historically cities would not pass municipal codes placing the financial burdens of prosecution solely in the hands of the various counties within the state. Id at 275. The legislature reacted by enacting RCW Chapter 39 as well as various other statutes which made it clear to the municipalities that they were responsible for prosecuting cases within their respective borders. See RCW 35.22.425 (repeal of city code requires municipality to compensate for costs of prosecution with the appropriate county pursuant to Chapter 39). If one looks at RCW 39.34.180(5), it becomes abundantly clear that the legislature, in enacting Chapter 39, intended for cities to actually adopt ordinances for crimes they intended to prosecute. This provision provides that for cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998. The choice of cities with no code in 1996, when the legislation was first adopted, was to either work out a financial arrangement with your county or adopt a municipal code.

Every word of a statute is to be given meaning. Greenwood v. Dep't of Motor Vehicles, 13 Wn. App. 624, 628. If the City is correct in their belief that they may charge any crime in violation of a RCW without specifically adopting the RCW by reference then they would be rendering meaningless so many legislative enactments it would be difficult to name them all here. See for instance RCW 35.21.180 (adoption by reference), RCW 35.20.250 (cities over 400,000 have concurrent jurisdiction) and State v. Hieu Nhu Truong,

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117 Wn.2d 63 (holding that since county ordinance was in conflict with state law the ordinance was in violation of Wash. Const. Art. XI, § 11).

CONCLUSION

The City of Auburn does not have the authority to prosecute a crime that they have not specifically adopted. Mr. Gauntt is not charged with crimes codified in the Auburn City Code and therefore these charges must be dismissed. Jenkins v. Bellingham Mun. Court, 95 Wn.2d 574.

Respectfully submitted this 30th day of April, 2009.

/s/
DAVID R. KIRSHENBAUM WSBA 12706
Attorney for Defendant

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Appendix I

Response to Defendant's Motion to Dismiss by Plaintiff, City of Auburn, in *City of Auburn v. Dustin B. Gauntt*, Auburn Municipal Court Cause Numbers C99329/I83470, dated May 7, 2009.

RECEIVED
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LAW OFFICE
KENYON DISNEY GOSS, INC. P.S.

IN THE MUNICIPAL COURT FOR THE CITY OF AUBURN
COUNTY OF KING, STATE OF WASHINGTON

CITY OF AUBURN,

Plaintiff,

v.

DUSTIN GAUNTT,

Defendant.

NO. C99329/189478

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

COMES NOW the Plaintiff, through its Attorneys, and responds to Defendant's Motion to Dismiss. The Plaintiff respectfully requests that this motion be denied as the City Prosecutor is authorized to charge and prosecute offenses under state statutes even when those statutes have not been incorporated into City ordinances.

I. RESPONSE

Defendant attempts to argue the City of Auburn has no authority to prosecute the charges in this matter as the Defendant was charged pursuant to the state statutes, which statutes have not been specifically adopted by reference in the City ordinances. In this case, the Defendant was charged with Unlawful Possession of Marijuana and Unlawful Possession of Paraphernalia, in violation of RCW 69.50.412(1) and RCW 69.50.4014, respectively. However, the Legislature has specifically granted cities the authority to prosecute

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misdemeanor and gross misdemeanor crimes whether those crimes are charged under state statutes or city ordinances.

A. Auburn is an optional code city.

First, the Defendant is incorrect in his assertion that Auburn is a first class city. Rather the City of Auburn is an optional code city. Section 1.08.010 of the Auburn City Code states as follows:

> 1.08.010 Noncharter code city classification adopted.
> There is adopted, for the city, the classification of noncharter code city retaining the council-mayor plan of government under which the city is presently operating, as provided in RCW 35A.02.030 of the Optional Municipal Code for the state. (1957 code § 1.55.010.)

Nonetheless, like first class cities, optional code cities enjoy the broadest authority possible for cities. Title 35A RCW [the optional code city statute] confers the greatest powers of self-government consistent with the constitution of this state and shall be construed liberally in favor of such cities. Specific mention of a particular municipal power or authority contained in Title 35A RCW or in the general law shall be construed as in addition and supplementary to, or explanatory of, the powers conferred in general terms by the optional code city statute. With that, RCW 35A.01.010 confers on the code cities "the broadest powers of local self-government consistent with the constitution of this state." In terms of criminal prosecution, RCW 34A.21.161 states that "[a]ll code cities shall observe and enforce, in addition to its local regulations, the provisions of state laws relating to the conduct, location and limitation on activities as regulated by state law . . .."

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B. Auburn Municipal Court is empowered to hear criminal cases charged under state law.

Preliminarily, the Defendant attempts to argue that municipal courts only have jurisdiction over the prosecution of charges made pursuant to city ordinances. However, as quoted by the Defendant, under RCW 3.50.020, municipal courts have:

> . . . exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. A hosting jurisdiction shall have exclusive original criminal and other jurisdiction as described in this section for all matters filed by a contracting city. The municipal court shall also have the jurisdiction as conferred by statute.

RCW 3.50.020 (emphasis added). RCW 39.34.180 is a statute that confers additional authority upon the municipal court.

C. RCW 39.34.180 empowers cities to charge under state laws.

RCW 39.34.180 clearly identifies the prosecution responsibilities imposed on cities and towns. That language provides that cities and towns are responsible for the prosecution of misdemeanor and gross misdemeanor offenses whether filed under state law or city ordinance, and further specifies that they must use their own court facilities. RCW 39.34.180 reads in part as follows:

> 39.34.180 Criminal justice responsibilities--Interlocal agreements.
>
> (1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony

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offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense. . . . (Emphasis added.)

This statute carries a very clear message, namely that every city is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, regardless of whether filed under state law or city ordinance. The statute also says that the city or town shall use its own court facilities (the city or town "must" carry out these responsibilities through the use of their own courts, staff, and facilities) and this supports the contention that the city or town must prosecute the criminal violations whether filed under state law or city ordinance.

The Defendant is correct in that RCW 39.34.180 was originally enacted to require that cities take financial responsibility for prosecuting crimes that occurred in their jurisdictions. RCW 39.34.180 was originally passed in response to several cities repealing their criminal ordinances in part or in their entirety so that they would no longer be financially responsible for prosecuting certain criminal actions. *City of Medina v. Primm*, 160 Wash.2d 268, 278, 157 P.3d 379 (2007). The Legislature responded to this by enacting RCW 39.34.180(1), which "expressly allocate[ed] to the cities the financial responsibility for the prosecution of *all* criminal misdemeanor and gross misdemeanor offenses occurring within the city limits." *Id.* at 278-79.

Again, this includes all offenses, whether filed under state law or city ordinance. Moreover, as further indication of the legislative intent that this statute is an authorization to prosecute such offenses, the statute also specifies that the city "must carry out these responsibilities through the use of their own courts, staff, and facilities ...." RCW 39.34.180.

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For that matter, this mandate (cities *must* carry out these responsibilities) specifies that the City must use its own court. Accordingly, that clearly answers the Defendant's argument about municipal court jurisdiction – as per RCW 3.50.020, "[t]he municipal court shall also have the jurisdiction as conferred by statute." Municipal courts have the jurisdiction to hear charges filed pursuant to RCW 39.34.180, even if filed under state law.

D. Statutory construction supports the City's contention that it can charge crimes pursuant to state law.

There can be no doubt that the statute, RCW 39.34.180, intended that the municipal court be empowered to adjudicate criminal misdemeanor and gross misdemeanor charges, whether filed under state law or city ordinance. That is the only reasonable construction of the statute. In *State v. Smith*, 80 Wn. App. 535, 910 P.2d 508 (1996), the court held that the primary objective of statutory construction is to carry out the intent of the legislative body by examining the language of the legislative enactment. *Stone v. Chelan County Sheriff's Dept.*, 110 Wn.2d 806, 809, 756 P.2d 736 (1988). In construing statutes, the courts are to carry out the Legislature's intention, as determined primarily from the statutory language. *State v. Wilbur*, 110 Wn.2d 16, 18, 749 P.2d 1295 (1988). Also, when interpreting statutes, the courts first look to the plain meaning of words used in the statutes. *State v. Fjermestad,* 114 Wn.2d 828, 835, 791 P.2d 897 (1990); *Lakewood v. Pierce County*, 106 Wn. App. 63, 70, 23 P.3d 1 (2001). *See also State v. Bright*, 77 Wn. App. 304, 310, 890 P.2d 487 (1995).

Strained, unlikely, unrealistic or absurd consequences are to be avoided. *Fjermestad*, 114 Wn.2d at 835; *State v. Neher*, 112 Wn.2d 347, 351, 771 P.2d 330 (1989); *State v. Stannard*, 109 Wn.2d 29, 36, 742 P.2d 1244 (1977); *State v. Vela*, 100 Wn.2d 636, 641, 673 P.2d 185 (1983) and *State v. Hughes*, 80 Wn. App. 196, 199, 907 P.2d 336 (1995). *See also*

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City of Seattle v. Wandler, 60 Wn. App. 309, 314, 803 P.2d 833 (1991). It would be an absurd construction of RCW 39.34.180 and 3.50.020 to construe them to mean anything other than that cities are responsible to prosecute offenses even if charged under state law, and shall use their own (municipal) courts. Additionally, statutes shall not be construed "so as to render any provision meaningless or superfluous." *Chelan*, 110 Wn.2d at 810. If cities could not charge under state law, the language of RCW 39.34.180 (cities are responsible for prosecution of misdemeanors/gross-misdemeanors referred from their law enforcement agencies, *whether filed under state law* or city ordinance) would be meaningless and superfluous. So, too, if municipal courts did not have the authority to hear charges filed under state law, the language of RCW 39.34.180 (cities must carry out these prosecution responsibilities *through the use of their own courts*) would be meaningless or superfluous. As noted above, that would not be proper statutory construction.

Moreover, if cities were only required to prosecute those actions that took place under city ordinances, cities would still be able to place a financial burden on the county by refusing to incorporate certain state laws. This theory goes against the reason for enacting RCW 39.34.180 in the first place, i.e., to make cities financially responsible for prosecuting all misdemeanors and gross misdemeanors, "whether filed under state law or city ordinance" that occur in their jurisdictions. That further illustrates the impropriety of the Defendant's argument, in that in construing statutes, the courts are to carry out the Legislature's intention.

II. CONCLUSION

RCW 39.34.180(1) specifically confers upon cities the right to prosecute all misdemeanor and gross misdemeanor crimes charged under either state statute or city ordinance. Thus, the City of Auburn does have the authority to charge the Defendant in this

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matter with violation of RCW 69.50.412(1) and RCW 69.50.4014. As such, the City respectfully requests that the Court deny Defendant's Motion to Dismiss and allow the City to proceed with the prosecution of this action.

RESPECTFULLY SUBMITTED this 7th day of May, 2009.

Allison Stanhope

Allison Stanhope, WSBA # 30486
Associate City Attorney

CERTIFICATE OF SERVICE

I, Gloria Cody-Egan, certify under the penalty of perjury of the laws of the State of Washington that I served a copy of this document to the following persons and in the following manner:

David R. Kirshenbaum
1314 Central Ave S, Ste 101
Kent WA 98032
(253) 852-6337 – fax
(253) 852-7979 – phone

- ☐ Hand Delivery/Personal Service
- ☐ First Class Mail
- ☒ Facsimile
- ☒ Legal Messenger
- ☐ E-mail

Dated: May 7, 2009

Gloria Cody-Egan
GLORIA CODY-EGAN

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Appendix J
Response to City's Memorandum by Defendant, Gauntt, in *City of Auburn v. Dustin B. Gauntt*, Auburn Municipal Court Cause Numbers C99329/I83470, dated May 14, 2009.

AUBURN MUNICIPAL COURT, KING COUNTY, WASHINGTON

CITY OF AUBURN, Plaintiff, vs. DUSTIN B. GAUNTT, Defendant.	NO. C99329 / I83470 RESPONSE TO CITY'S MEMORANDUM

COMES NOW the defendant, Dustin Gauntt, by and through his attorney, David R. Kirshenbaum, and responds to the City's response as follows:

LEGAL AUTHORITY AND ARGUMENT

Does RCW 39.34.180 give the City of Auburn unbridled authority to prosecute every criminal misdemeanor statute codified in the Revised Code of Washington without concern as to whether the City Council has adopted the same or similar ordinance criminalizing said conduct within the boundaries of the City of Auburn? The answer to this question is clearly no.

Every statute and every word within a statute is there for a purpose and is to be given meaning. City of Spokane Valley v. Spokane County, 145 Wn. App. 825, 832

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(Wash. Ct. App, 2008). No portion of a statute is to be rendered superfluous. Id. If this Court adopts the City's position in regard to RCW 39.34.180, it will in effect not only render many RCW provisions superfluous, but it will also render some of the City's own ordinances superfluous.

RCW 39.34.180 stands for the proposition that if the City does not enact a criminal code and forces the county to step in and prosecute, then the City is "responsible" to reimburse the county. RCW Title 39 is entitled Public Contracts and Indebtedness. Title 39 Chapter 34 is entitled Interlocal Cooperation Act. According to RCW 39.34.010, the purpose of the act is to allow interlocal agreements.

The City misinterprets section (1) of RCW 39.34.180 as it relates to cases filed under state law.

> Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

The key phrase in the section is "referred by their respective law enforcement agencies" not "whether filed under state law". This interpretation gives meaning to the whole statute and renders no terms or provisions superfluous. Clearly the purpose of this statute is to assure that cities are held financially responsible for the prosecution of criminal

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misdemeanors referred by their police forces, regardless of whether those charges are filed in municipal or state court. This provision is not intended to confer jurisdiction but to delineate monetary responsibility. RCW 39.34 et. seq. is, after all, the Interlocal Cooperation Act.

Furthermore, one cannot read RCW 39.34.180(1) in a vacuum and ignore the remaining four sections of this statute. State v. Ray, 23 Wn. App. 238, 240 (Wash. Ct. App. 1979). Section 2 of the statute sets out principles of negotiation as it relates to interlocal agreements. Section 3 discusses what happens if an agreement cannot be reached as compensation. Section 4 discusses the implications of terminating an interlocal agreement. Section 5 requires that a city without a criminal code must create one. If the City's position is deemed to be correct then section 5 would be unnecessary. The City, in its brief, argues that statutes are not to be rendered superfluous yet that is exactly what the outcome would be by ignoring RCW 39.34.180(5). If the City could simply allege a violation of state law in a complaint, without adopting an ordinance, then section 5 would be unnecessary. The defense position gives meaning to every word in the statute. A city meets the requirements of RCW 39.34.180 simply by entering into an interlocal agreement with the county in which the city is located or with one or more cities. See RCW 3.50.815[1].

RCW 3.50.815 clearly evinces that it was not intent of the legislature to relieve the requirements of cities to adopt criminal laws that it wished to prosecute. See RCW

[1] RCW 3.50.815 A city may meet the requirements of RCW 39.34.180 by entering into an interlocal agreement with the county in which the city is located or with one or more cities.

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3.50.430 (All criminal prosecutions for the violation of a city ordinance shall be conducted in the name of the city and may be upon the complaint of any person).

The jurisdiction of the Auburn Municipal Court stems from RCW 3.50. ACC 2.14.020.[2] This makes the Municipal Court a court of limited jurisdiction. A court of limited jurisdiction is any court organized under RCW Titles 3, 35, or 35A.[3] RCW 35A.11.020 sets out the powers vested in legislative bodies of noncharter and charter code cities. In its relevant part to this discussion, it provides as follows:

> Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

---

[2] A. The municipal court shall have jurisdiction and shall exercise all powers enumerated in this chapter and in Chapter 3.50 of the Revised Code of Washington, existing or amended at or after the effective date of the ordinance codified in this chapter, together with such other powers and jurisdiction as are generally conferred upon such court in the state of Washington either by common law or by express statute.

B. The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city. The municipal court shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. The municipal court shall also have the jurisdiction as conferred by state statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. ACC 2.14.020.

[3] 35A is the chapter that establishes the optional municipal code. This is the code that the City of Auburn operates under.

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If the state legislature did not intend for municipalities to adopt their own criminal codes, the legislature could have either just granted the cities concurrent jurisdiction like they did for cities over four hundred thousand, or like they did for the district courts. See RCW 35.20.250 and RCW 3.66.060. The fact that the legislature did not do this clearly undermines the City's position that RCW 39.34.180 created the ability for the City to prosecute state statutes not adopted by the City. If the City's position is correct, then RCW 35A.11.200 would be unnecessary. See also RCW 3.50.800 and RCW 3.50.805 (these sections makes it illegal to repeal in its entirety that portion of its municipal code defining crimes unless the municipality has reached an agreement with the appropriate county under chapter 39.34 of the RCW under which the county is to be paid a reasonable amount for costs associated with prosecution, adjudication, and sentencing in criminal cases filed in district court as a result of the repeal). In other words, these statutes require the City to operate under its own municipal code.

The City, in their response to the Defendant's motion to dismiss, emphasized a portion of RCW 3.50.020 where the statute indicates that the municipal court may also have jurisdiction as conferred by statute. The City is misreading this legislation. The more reasonable interpretation of this statute is that the legislature is referring to such things as issuing civil no contact orders or anti harassment orders[4]. See RCW 25.50 et. seq. and

[4]The courts defined in *RCW 26.50.010(3) have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the

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RCW 10.14 et. seq. Municipal Courts did not have the authority to deal with these cases until they were given the authority by statute. This interpretation gives every word in a statute meaning and renders none of the statutes superfluous. The City is not able to find a statute that specifically says that they can prosecute a person for conduct that has not been criminalized by their city code.

The legislature is presumed to know the law. De Grief v. Seattle, 50 Wn.2d 1 (Wash. 1956). When they use language in one statute and not in another it is presumed to be done purposefully. State v. Roggenkamp, 153 Wn.2d 614 (Wash. 2005). Since Seattle and the district courts were the only governmental entities granted concurrent jurisdiction to enforce state statutes, it follows that no other entities were granted that authority. RCW 35.20.250 and RCW 3.66.060. Id. at 626.

The City's position is not consistent with its own municipal code. ACC 1.24.010 Penalties for Criminal Violations provides as follows:

> A. Unless a specific penalty is expressly provided, for all violations of ordinances of the city which are identified as misdemeanors, upon conviction, such violations are punishable by imprisonment in the appropriate city or county jail for a period of up to 90 days and a fine of up to $1,000, or by both such fine and imprisonment.
>
> B. Unless a specific penalty is expressly provided, for all violations of ordinances of the city which are identified as gross misdemeanors, upon conviction, such violations are punishable by imprisonment in the

---

jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection. RCW 26.50.020(5).

Municipal courts may exercise jurisdiction and cognizance of any civil actions and proceedings brought under this chapter by adoption of local court rule, except the municipal court shall transfer such actions and proceedings to the superior court when it is shown that the respondent to the petition is under eighteen years of age. RCW 10.14.150(2).

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appropriate city or county jail for a period of up to one year and a fine of up to $5,000, or by both such fine and imprisonment.

C. Any violations of ordinances of the city that are identified as criminal violations, including being punishable by criminal penalties, but not identified as to whether they are misdemeanors or gross misdemeanors, shall be deemed misdemeanors or gross misdemeanors, as follows:

1. Criminal violations that are punishable by up to and including imprisonment in the appropriate city or county jail for a period of up to one year and a fine of up to $5,000, or by both such fine and imprisonment, shall be deemed gross misdemeanors; provided, that criminal violations that are punishable by not more than imprisonment in the appropriate city or county jail for a period of up to 90 days and a fine of up to $1,000, or by both such fine and imprisonment, shall be deemed misdemeanors;

2. Criminal violations that are adopted by reference from state statutes, or extrapolated with the same or substantially the same language from state statutes, shall be classified as misdemeanors or gross misdemeanors consistent with their classification by state statutes, and shall be punishable accordingly;

3. Criminal violations that are not identifiable as either misdemeanors or gross misdemeanors shall be deemed misdemeanors and shall be punishable accordingly.

D. In addition, a defendant may be assessed court costs, jury fees and such other fees or costs as may be authorized in statute or court rules. In any court proceeding to enforce this section, the city shall have the burden of proving by evidence beyond a reasonable doubt that a violation occurred. In a proceeding under this section a defendant shall be accorded each and every right protected under the Constitutions of the United States of America and the state of Washington, all applicable federal, state and local laws, and applicable court rules promulgated by the Washington Supreme Court and the inferior courts under the authority of the Washington Supreme Court.

It is clear from this ordinance that its authors understood that Auburn may properly only prosecute criminal violations of their ordinances or state statutes specifically adopted by reference. ACC 2.14.120 states that all criminal prosecutions for the violation of a city ordinance shall be conducted in the name of the city and may be upon the complaint of any person. The ordinance is silent as to what happens to a criminal prosecution not based on a

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city ordinance. The City's interpretation of RCW 39.34.180 renders its own ordinances superfluous.

CONCLUSION

The City of Auburn's failure to adopt the state statutes that they have charged Mr. Gauntt with violating, requires this Court to dismiss these charges. Jenkins v. Bellingham Mun. Court, 95 Wn.2d 574.

Respectfully submitted this 14th day of May, 2009.

DAVID R. KIRSHENBAUM-WSBA 12706
Attorney for Defendant

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Appendix K
Order of Auburn Municipal Court Denying
the Defendant's Motion to Dismiss, dated June 5, 2009.

16858617

AUBURN MUNICIPAL COURT, STATE OF WASHINGTON

CITY OF AUBURN,)
Plaintiff,) NO. C 99329/183470
v.) **ORDER OF DISMISSAL**
Dustin B. Gaunt)
Defendant.)
☐ In custody ☐ Out of custody)

~~Reason for dismissal:~~

☐ **City's Motion**

☒ **Defense Motion** to dismiss based upon jurisdiction is denied, finding that RCW 39.34.180 is controlling

~~Case to be dismissed as follows:~~

☐ ~~**Dismissed without Prejudice**~~

☐ ~~**Dismissed with Prejudice**~~

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above listed case be dismissed.

DATED this 5 day of June, 2009.

MUNICIPAL COURT JUDGE

White: Court Yellow: Defendant Pink: Prosecutor Goldenrod: Defense Attorney

Appendix L-1
Judgment & Sentence (Nunc Pro Tunc), dated July 7, 2009

16858617

AUBURN MUNICIPAL COURT
KING COUNTY, STATE OF WASHINGTON

CITY OF AUBURN/ALGONA **Plaintiff**

vs. Dustin Gauntt **Defendant.**

Cause No(s). C 99 329

JUDGMENT AND SENTENCE FOR:

1) POM Nunc Pro Tunc

2) Poss of Paraphernalia

The Defendant plead guilty, or plead not guilty and the verdict of the jury was guilty, or the finding of the court was guilty; therefore, the Defendant is ADJUDGED guilty and sentenced as follows:

☐ Sentence is deferred for _____ months for count(s) _____. Defendant shall serve _____ days in jail on the following conditions:

☒ The Court sentences the defendant to:

Count 1) 90 days of jail and suspends 89 days; and a fine of $ 1000 with $ 750.- suspended

Count 2) 90 days of jail and suspends 89 days; and a fine of $ 1000 with $ 1000.- suspended

Suspensions are for 24 months conditioned as stated below and will be subject to ~~strict scrutiny~~ at review.

Jail sentences are ☒ concurrent ☐ consecutive with all other commitments ☐ credit for time served if applicable.

The defendant shall pay the following fines, costs and assessments:

$ 250.- Fine ☐ includes the assessments and costs

$ 225.- Costs (interpreter; warrant; filing; witness and other fees)

$ 43.- Assessments

$ _____ Public Defender Costs

$ 75.- Probation Fee (unless reduced by Probation Dept.)

Total..... $ 593.- All payments shall be made through the clerk of this court.

$593

CONDITIONS OF DEFERRED SENTENCE, PROBATION, AND SUSPENDED JAIL TIME:

Pay in Full or Contact:
Signal Credit Management Services
(800) 874-1958 by 8-10-09

☒ No criminal violations of law or alcohol related infractions.

☐ Not drive a motor vehicle without a valid license and proof of insurance.

☐ Use no alcoholic beverages or non-prescribed controlled drugs.

☐ Probation for _____ months with Probation Department and abide by all requirements of Probation Department. Pay a $_____ monthly probation fee unless the fee is reduced by the Probation Department. Submit to random urinalysis/breath analysis as determined by the probation department.

☐ Pay restitution in the amount of $_____ by _____ (date) to _____ and file proof of completion to the court.

☐ Attend ☐ Alcohol ☐ Narcotics Anonymous meetings _____ times a week for _____ months or as recommended by treatment provider.

☐ File proof of timely enrollment within _____ days of the following:

☐ Certified Domestic Violence Program ☐ Anger Management (Non-Domestic Violence only) ☐ Consumer Awareness

☐ DUI Victim's Panel ☐ Alcohol/Drug Information School ☐ One Year Alcohol/Drug Treatment

☐ Two Year Alcohol/Drug Treatment ☐ Driver Improvement School ☐ DV Victim's Panel ☐ Mental Health Evaluation

☐ Other _____

☐ Do not go upon the property of and have no contact with _____, directly, indirectly, in person, or through any third parties.

☒ Obtain an alcohol/drug evaluation within 45 days and comply with any recommendations immediately.

☐ _____ Hours of Community Service which must be completed within _____ days.

☐ Other: _____

☐ **Return for a review hearing:** _____.

If the defendant has not **completed** the alcohol/drug evaluation and /or entered domestic violence treatment by the review hearing date or fails to appear for the review hearing, the court shall impose _____ days in jail (and revoke the deferred sentence if applicable).

I have read the rights, conditions & warnings on the back of this form.

DATED: 7-7-09 Nunc Pro Tunc

DEFENDANT'S SIGNATURE DATE OF BIRTH

7-8-09

JUDGE / COURT COMMISSIONER / PRO TEM

1403 8th St NE #92
Auburn WA 98002
Defendant's Address and Telephone

PROSECUTING ATTORNEY BAR #

DEFENSE ATTORNEY BAR #

AUBURN MUNICIPAL COURT
340 E Main St., Suite 101, Auburn, WA 98002-5548 253-931-3076

C

Appendix L-2
Judgment & Sentence (original), dated June 8, 2009

16858617

AUBURN MUNICIPAL COURT
KING COUNTY, STATE OF WASHINGTON

CITY OF AUBURN/ALGONA **Plaintiff**

vs. Dustin Gauntt **Defendant.**

Cause No(s). C 99329
JUDGMENT AND SENTENCE FOR:
1) PCM
2) ~~RCW Drug Paraphernalia~~ RCW

The Defendant plead guilty, or plead not guilty and the verdict of the jury was guilty, or the finding of the court was guilty; therefore, the Defendant is ADJUDGED guilty and sentenced as follows:

☐ Sentence is deferred for _____ months for count(s) _____. Defendant shall serve _____ days in jail on the following conditions:

☒ The Court sentences the defendant to:
Count 1) 90 days of jail and suspends 89 days; and a fine of $ 1000 with $ 750.- suspended
Count 2) ~~90~~ days of jail and suspends ~~90~~ days; and a fine of $ ~~1000~~ with $ 1000 suspended RC
Suspensions are for 24 months conditioned as stated below and will be subject to strict scrutiny at review.

Jail sentences are ~~RCW~~ ☐ concurrent ☐ consecutive with all other commitments ☐ credit for time served if applicable.
The defendant shall pay the following fines, costs and assessments:

$ 250.-	Fine ☐ includes the assessments and costs
$ 225.-	Costs (interpreter; warrant; filing; witness and other fees)
$ 43	Assessments
$	Public Defender Costs
$ 75	Probation Fee (unless reduced by Probation Dept.)
Total..... $ 593.-	All payments shall be made through the clerk of this court.

593

CONDITIONS OF DEFERRED SENTENCE, PROBATION, AND SUSPENDED JAIL TIME:

☒ No criminal violations of law or alcohol related infractions.
☐ Not drive a motor vehicle without a valid license and proof of insurance.
☐ Use no alcoholic beverages or non-prescribed controlled drugs.
☐ Probation for _____ months with Probation Department and abide by all requirements of Probation Department. Pay a $_____ monthly probation fee unless the fee is reduced by the Probation Department. Submit to random urinalysis/breath analysis as determined by the probation department.

Pay in Full or Contact:
Signal Credit Management Services
(866) 874-1858 by 7/8/09

☐ Pay restitution in the amount of $_____ by _____(date) to _____ and file proof of completion to the court.
☐ Attend ☐ Alcohol ☐ Narcotics Anonymous meetings _____ times a week for _____ months or as recommended by treatment provider.
☐ File proof of timely enrollment within _____ days of the following:
☐ Certified Domestic Violence Program ☐ Anger Management (Non-Domestic Violence only) ☐ Consumer Awareness
☐ DUI Victim's Panel ☐ Alcohol/Drug Information School ☐ One Year Alcohol/Drug Treatment
☐ Two Year Alcohol/Drug Treatment ☐ Driver Improvement School ☐ DV Victim's Panel ☐ Mental Health Evaluation
☐ Other _____

☐ Do not go upon the property of and have no contact with _____, directly, indirectly, in person, or through any third parties.
☒ Obtain an alcohol/drug evaluation within 45 days and comply with any recommendations immediately.
☐ _____ Hours of Community Service which must be completed within _____ days.
☐ Other: _____

☐ **Return for a review hearing:** _____.
If the defendant has not **completed** the alcohol/drug evaluation and /or entered domestic violence treatment by the review hearing date or fails to appear for the review hearing, the court shall impose _____ days in jail (and revoke the deferred sentence if applicable).
I have read the rights, conditions & warnings on the back of this form.

DATED: 6-8-09

DEFENDANT'S SIGNATURE — DATE OF BIRTH 9/9/84

JUDGE / COURT COMMISSIONER / PRO TEM

Defendant's Address and Telephone

PROSECUTING ATTORNEY — BAR #

DEFENSE ATTORNEY — BAR #

AUBURN MUNICIPAL COURT
340 E Main St., Suite 101, Auburn, WA 98002-5548 253-931-3076

Appendix L-3
Statement of Defendant on Submittal or Stipulation to Facts

16858617

AUBURN MUNICIPAL COURT
KING COUNTY, WASHINGTON

STATE OF WASHINGTON
CITY OF AUBURN

Plaintiff

vs.

Dustin Gaunt

Defendant

NO. C99329

STATEMENT OF DEFENDANT ON SUBMITTAL OR STIPULATION TO FACTS

[redacted]

1. I am the defendant in this case. I wish to submit this case on the record. I understand that:

(a) The judge will read the police report and other materials attached and, based upon that evidence, the judge will decide if I am guilty of the crime(s) of Possession of Marijuana and Possession of drug Paraphernalia

(b) I have the right to be represented by a lawyer in this case. If I cannot afford to pay for a lawyer, one will be provided at no expense to me. If I proceed without a lawyer, I will be acting as my own lawyer, and there may be disadvantages to me that would not exist if I had a lawyer representing me.

(c) I am giving up the constitutional right to a jury trial, the right to hear and question witnesses, the right to call witnesses on my own behalf, and the right to testify or not to testify.

(d) The maximum sentence(s) for the crime(s) is:

☐ Gross Misdemeanor: 1 year in jail and $5,000 fine
☒ Misdemeanor: 90 days in jail and $1,000 fine (both counts)
☐ Other _____

(e) The mandatory minimum sentence(s) for the crime(s) is:

1 day 250

(f) The Judge may impose any sentence up to the maximum, no matter what the prosecuting attorney or defense recommends.

2. The prosecuting attorney has promised to take the following action and/or make the following recommendations:

90/89 1000/750 + CA & Alc/Drug eval + follow up
~~None disclosed~~ ADIS DUI - VIP 2 yrs juris.

3. No one has made threats or promises to get me to submit this case other than the above promises or recommendations by the prosecuting authority.

Dated: 6/8/09

Prosecuting Attorney

Defendant

Defense Attorney 27706

Judge

* Defendant is stipulating and preserving all issues on appeal

STATEMENT OF DEFENDANT ON SUBMITTAL OR STIPULATION TO FACTS
CrRLJ 6.1.2m(b) PAGE 1 of 1

7/9/96 WHITE/COURT YELLOW/DEFENDANT PINK/PROSECUTOR GOLDENROD/DEFENSE ATTORNEY

Appendix L-4
*Auburn Police Department incident report – Case # 08-1504

* Submitted to Municipal Court with Appendix L-3 (Statement of Defendant on Submittal or Stipulation to Facts).

Auburn Police Department
Police Report

Reported Date: 12:26:34 12/05/08
Crime: CSPM Cont Subst/Posession
Occurence Date: 12:25:00 12/05/08-12:26:00 12/05/08 Day:
Status: PSP Clearance: AA

Addr: 400 4TH ST NE Area: 2-212 Reporting District 21
City: Auburn St: WA Zip: 98002 Video: No

SUD Suspectd using drugs

Responding Officers: T Byers
A deChoudens
Approved by: B Williams
Received By: T Byers

Disposition: CAA Disp Date: 12/05/08

Modus Operandi:

Factor	Description	Method

INVOLVED PERSONS

Involvement: Arrested
Last: GAUNTT First: DUSTIN Mid: BAXTER
Address: 1403 8TH ST NE; 22
Apt: City: Auburn State: WA Zip: 98002 Phone: (253)561-1106
SSN: 250-77-5727 DOB: 09/09/84 Age: 24. Race: W Sex: M
Ht: 5'11" Wt: 170 Hair: BRO Eyes: BLU
Work Phone: ( ) -

Vehicle Section

License Plate: 498WQL Vehicle Year: 2001
License Type: PC Regular Passenger Automobile Make: NISS Nissan
State: WA Model: SENTRA
Expires: 12/31/08 Color: SIL /
VIN: 3N1CB51D41L418543 Doors: 4
Vehicle Type: PCAR Passenger Car Value: $0.00

Owner: 288951
Lst: GAUNTT Fst: DUSTIN Mid: BAXTER
DOB: 09/09/84 SSN: 250-77-5727 Adr: 1403 8TH ST NE; 22
Rac: W Sx: M Tel: (253)561-1106 Cty: Auburn St: WA Zip: 98002

Date Recov/Rcvd 12/05/08
Area:
Wrecker Service: V Valley Towing UCR Status:
Local Status: CI City Impound Storage Location: Valley Imp
Comments:

Evidence Section

ID Number: 78015
Type: EIS Owner #: 288951
Item: Pipe Color MUL/ Last: GAUNTT
Brand: Quantity: 1.000 First: DUSTIN
Model: Measure: Middle: BAXTER
Serial #: Description: TB 01/ Glass Pipe
Comments:
with residue
Transaction:INIT Initial Entry Date: 14:44:16 12/05/08 Location: TEMP LOCKER
Who to/from: T Byers Custodian: T Byers
Reason: in

ID Number: 78016
Type: EIS Owner #: 166306
Item: Marijuana Color GRN/ Last: CITY OF AUBURN
Brand: Quantity: 0.100 First:
Model: Measure: GM Middle:
Serial #: Description: TB02/ Marijuana
Comments:

Transaction:INIT Initial Entry Date: 17:00:40 12/05/08 Location: TEMP LOCKER
Who to/from: T Byers Custodian: T Byers
Reason: in

T. Byers 5594 Fri Dec 05 16:22:43 PST 2008 No Video/motorcycle

I stopped a vehicle for a drug violation after seeing the driver lighting a marijuana pipe while driving. The driver was subsequently arrested.%

I was northbound on D ST NE and was operating a marked Police motorcycle. Sgt. deChoudens was riding with me. We were stopped at the intersection with 4th ST NE and waiting for a vehicle to clear the intersection so that we could enter 4th ST NE westbound.

I saw the involved vehicle, (WA 498WQL), approaching westbound on 4th ST NE. The vehicle neared the intersection and I saw that the driver had both hands near his mouth. The vehicle got closer and I saw that the driver was attempting to light a pipe using a lighter.

I could see that the pipe was multi-colored and appeared to shine and was being handled by the driver in a way that was consistent with that of people smoking controlled substances. This observation is based upon my training and experience.

I accelerated from the stop sign and stopped the vehicle on 4th ST NE at the intersection with Auburn Way North.

I approached driver and asked him what he had been lighting. The driver had a cigarette in his hand at the time of my initial contact. He told me that he had been lighting a cigarette. I told the driver that he was lying and told him to hand me the pipe.

The driver then reached into the center console of the vehicle and produced a multi-colored glass pipe. The pipe had partially burnt green leafy material in the bowl. The appearance and the smell of the substance was consistent with that of burnt marijuana based upon my training and experience.

I asked the driver for his license and insurance. The driver handed me a Washington license that identified him as Gauntt, Dustin B. (09/09/84). Gauntt told me that he did not have insurance for the vehicle.

I asked Gauntt to step from the vehicle and placed him under arrest for possession of marijuana less than 40 grams and possession of drug paraphernalia

The vehicle was searched and towed/impounded by Valley Towing.

Officer Bear was dispatched to assist me in transporting Gauntt to the Auburn City Jail.

I returned to the Police Department and tested the material left in the bowl of the pipe. I used NIK test kit E, (Duquenois Levine). Using the protocols established by the WSPCL, I field tested the substance with positive results for the presence of Marijuana.

The weight of the suspected marijuana was .1 gram. The total package weight of the evidence envelope was 21.3 grams.

The evidence was turned in to evidence storage on this date.

I completed citation CR 099329 for possession of Marijuana less than 40 grams and possession of drug paraphernalia, citing Gauntt into Auburn Municipal Court on 12/18/08. Gauntt was provided with a copy of the criminal citation as part of his property at booking.

I also completed NOI IN 083470 for Negligent driving 2nd degree as he was driving without using his hands and for no proof of insurance.

This case should be forwarded to the Auburn City Prosecutors Office for review and filing.

Appendix L-5

* Amended Complaint – Possession of Marijuana Under Forty Grams,

* Submitted to Municipal Court with Appendix L-3 (Statement of Defendant on Submittal or Stipulation to Facts).

16858617

AUBURN MUNICIPAL COURT
DEC 10 2008
FILED

IN THE AUBURN MUNICIPAL COURT
KING COUNTY, STATE OF WASHINGTON

CITY OF AUBURN,

Plaintiff,

v

GAUNTT, DUSTIN B.,

Defendant.

D.O.B. 9/9/1984

NO. C99329

AMENDED COMPLAINT

POSSESSION OF 40 GRAMS OR LESS OF MARIJUANA

COUNT I OF II

The Undersigned Prosecuting Attorney for the City of Auburn in the name and by the authority of the City Attorney for the City of Auburn, King County, State of Washington, does hereby accuse the above named Defendant of the crime of **POSSESSION OF 40 GRAMS OR LESS OF MARIJUANA**, a misdemeanor, committed as follows:

That the Defendant, in the City of Auburn, State of Washington, on or about **12/5/2008** possessed forty grams or less of marijuana.

Contrary to RCW 69.50.4014 and the Auburn City Code and against the peace and dignity of the State of Washington.

Maximum Penalty: 90 days in jail and/or a $1,000 fine.
Mandatory Minimum Penalty: First Offense – 1 day in jail and $250.00 fine and $50.00 to the Drug Fund. Second or Subsequent Offense – 1 day in jail and $500.00 fine and $50.00 to the Drug Fund.

Based upon the police reports, statements and anticipated testimony in this case, the below-signed Prosecuting Attorney does hereby certify, under penalty of perjury, that he/she has reasonable grounds to believe, and does believe, that the Defendant committed the offense, contrary to law.

Prosecuting Attorney

Harry Boesche

WSBA # 29893

Dated: 12/8/2008 at Auburn, Washington

City Attorney
City of Auburn
25 West Main
Auburn, WA 98001
(253) 931-3030
FAX (253) 931-4007

Appendix L-6
*Amended Complaint – Unlawful Use of Drug Paraphernalia,

* Submitted to Municipal Court with Appendix L-3 (Statement of Defendant on Submittal or Stipulation to Facts).

16858617

AUBURN MUNICIPAL COURT
DEC 10 2008
FILED

IN THE AUBURN MUNICIPAL COURT
KING COUNTY, STATE OF WASHINGTON

CITY OF AUBURN,

Plaintiff,

v

GAUNTT, DUSTIN B.,

Defendant.

D.O.B. 9/9/1984

NO. C99329

AMENDED COMPLAINT

UNLAWFUL USE OF DRUG PARAPHERNALIA

COUNT II OF II

The Undersigned Prosecuting Attorney for the City of Auburn in the name and by the authority of the City Attorney for the City of Auburn, King County, State of Washington, does hereby accuse the above named Defendant of the crime of **UNLAWFUL USE OF DRUG PARAPHERNALIA**, a misdemeanor, committed as follows:

That the Defendant, in the City of Auburn, State of Washington, on or about **12/5/2008** used drug paraphernalia to plant, propagate, cultivate, grow, harvest manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

Contrary to RCW 69.50.412(1) or (2) charged pursuant to the authority vested by RCW 39.34.180 and the Auburn City Code 9.22.020 A. and against the peace and dignity of the City of Auburn;

Maximum Penalty: 90 days in jail and/or a $1,000 fine.
Mandatory Minimum Penalty: First Offense – 90/89 and $250.00 fine and $50.00 to the Drug Fund
Second Offense – 90/89 and $500.00 fine and $50.00 to Drug Fund.

Based upon the police reports, statements and anticipated testimony in this case, the below-signed Prosecuting Attorney does hereby certify, under penalty of perjury, that he/she has reasonable grounds to believe, and does believe, that the Defendant committed the offense, contrary to law.

Prosecuting Attorney

Harry Boesche

WSBA # 29893

Dated: 12/8/2008 at Auburn, Washington

City Attorney
City of Auburn
25 West Main
Auburn, WA 98001
(253) 931-3030
FAX (253) 931-4007

Appendix L-7
*Uniform Citation Number C99329
(original charging document, Possession of Marijuana, Drug Paraphernalia).

* Submitted to Municipal Court with Appendix L-3 (Statement of Defendant on Submittal or Stipulation to Facts).

16858617

MICRO DATA OLYMPIA (360) 570-8400

CRIMINAL ☐ **TRAFFIC** ☒ **NON-TRAFFIC** CR 099329

IN THE ☐ DISTRICT ☒ MUNICIPAL COURT OF
☐ STATE OF WASHINGTON, PLAINTIFF VS. NAMED DEFENDANT
☐ COUNTY OF KING
☒ CITY/TOWN OF AUBURN
L.E.A. ORI #: WA0170100 — 08-15547 — COURT ORI #:

☐ AUKEEN, KENT , WASHINGTON
☐ AUBURN, AUBURN WA
☐ WA017033J DIST
☐ WA017021J MUN

THE UNDERSIGNED CERTIFIES AND SAYS THAT IN THE STATE OF WASHINGTON

DRIVER'S LICENSE NO.	STATE	EXPIRES	PHOTO I.D. MATCHED
GRANTDR164QZ	WA	9/10	☒ YES ☐ NO

NAME: LAST	FIRST	MIDDLE	CDL
GRANT	DUSTIN	B	☐ YES ☒ NO

ADDRESS: 1403 8TH ST NE 98002 — ☐ IF NEW ADDRESS

CITY	STATE	ZIP CODE	EMPLOYER	LOCATION
AUBURN	WA	98002	UNEMPLOYED	

DATE OF BIRTH	RACE	SEX	HEIGHT	WEIGHT	EYES	HAIR
08/09/84	W	M	5'11	170	BLU	BRN

RESIDENTIAL PHONE NO.	CELL/PAGER NO.	WORK PHONE NO.
( )	( )	( )

VIOLATION DATE	MONTH	DAY	YEAR	TIME	☐ INTERPRETER NEEDED
ON OR ABOUT	12	05	08	24 HOUR 1226	LANG:

AT LOCATION: 400 45TH ST NE — M.P. — CITY/COUNTY OF: AUBURN / KING / PIERCE

DID OPERATE THE FOLLOWING VEHICLE/MOTOR VEHICLE ON A PUBLIC HIGHWAY AND

VEHICLE LICENSE NO.	STATE	EXPIRES	VEH. YR.	MAKE	MODEL	STYLE	COLOR
498WQL	WA	12/08	81	DODG		4DR	TAN

TRAILER #1 LICENSE NO.	STATE	EXPIRES	TR. YR.	TRAILER #2 LICENSE NO.	STATE	EXPIRES	TR. YR.

OWNER/COMPANY IF OTHER THAN DRIVER

ADDRESS — CITY — STATE — ZIP CODE

ACCIDENT	BAC	COMMERCIAL VEHICLE	HAZMAT	EXEMPT VEHICLE
(NO) NR R I F	READING	☐ YES ☐ NO	☐ YES ☐ NO	☐ FARM ☐ R.V. ☐ FIRE ☐ OTHER

DID THEN AND THERE COMMIT EACH OF THE FOLLOWING OFFENSES

#1 VIOLATION/STATUTE CODE: 69.50.401E — ☐ DV — Poss. Controlled Substance
Less Than 40 g — AUBURN MUNICIPAL COURT

#2 VIOLATION/STATUTE CODE: 69.50.103 — ☐ DV — Poss Drug Paraphernalia
DEC 08 2008
FILED

☒ MANDATORY COURT APPEARANCE **OR** ☐ BAIL FORFEITURE IN U.S. $

APPEARANCE DATE	MO.	DY.	YR.	TIME	RELATED #	DATE ISSUED
	12	18	08	8:30 P.M.	1000834010	12/05/08

☒ Served on Violator
☐ Sent to Court for Mailing
☐ Referred to Prosecutor

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT I HAVE ISSUED THIS ON THE DATE AND AT THE LOCATION ABOVE, THAT I HAVE PROBABLE CAUSE TO BELIEVE THE ABOVE NAMED PERSON COMMITTED THE ABOVE OFFENSE(S).

OFFICER: T. STERS — # 5574
OFFICER — #

CR 099329

ABSTRACT OF JUDGMENT — **COMPLAINT / CITATION**

CRG	PLEA	CNG	FINDINGS	FINE	SUSPENDED	SUB-TOTAL	FIND/JUDG DATE
1	G NG		G NG D BF	$	$	$	ABS. MLD TO OLY
2	G NG		G NG D BF	$	$	$	TO SERVE
					OTHER COSTS $		WITH DAYS SUP.

RECOMMENDED NONEXTENSION OF SUSPENSION ☐ — LICENSE SURRENDER DATE — TOTAL COSTS $ — CREDIT / TIME SVD

WASHINGTON UNIFORM COURT DOCKET - COURT COPY
WASHINGTON UNIFORM COURT DOCKET - DOL COPY

May 2007
May 2007